TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 258.

THE TOWN OF WALNUT, PLAINTIFF IN ERROR,

vs.

J. H. WADE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 12, 1878.



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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms in the city of Chicago, in the district aforesaid, before the judges thereof, on Friday, the twenty-second day of March, in the year of our Lord one thousand eight hundred and seventy-eight, and of our Independence the one hundred and second.

WILLIAM H. BRADLEY, *Clerk.*

J. H. WADE
vs.
THE TOWN OF WALNUT, IN BUREAU COUNTY, ILLINOIS. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fifth day of May, A. D. 1877, came J. H. Wade, the said plaintiff, by Messrs. George A. Sanders and Thomas S. McClelland, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his bond for costs and declaration against said defendant in said entitled cause, which said bond
2 and declaration are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court. May term, A. D. 1877.

J. H. WADE
vs.
TOWN OF WALNUT, BUREAU CO., ILLS.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, I hereby agree and stipulate that execution may issue against my property for any costs taxed against him. Dated this 5th day of May, A. D. 1877.

THOMAS S. McCLELLAND.

(Endorsed:) Filed May 5th, A. D. 1877. Wm. H. Bradley, clerk.

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court. July term, 1877.

3 J. H. WADE
vs.
THE TOWN OF WALNUT, IN BUREAU CO., ILLINOIS. } Assumpsit.

J. H. Wade, a citizen of the State of Ohio, plaintiff in this suit, by

George A. Sanders and T. S. McClelland, his attorneys, complains of the town of Walnut, a corporation existing by virtue of and doing business under the laws of Illinois, in the county of Bureau, district and State aforesaid, defendant, of a plea of trespass on the case on promises.

For that whereas the defendant heretofore, to wit, on the 1st day of January, A. D. 1871, to wit, at the district and county and State aforesaid, by the name and style of Walnut Township, made its divers, to wit, 1,010 instruments partly printed and partly in writing, commonly called interest warrants or coupons, and then and there delivered the same to the Illinois Grand Trunk Railway, and the same were made payable on the 1st day of January annually, at the State treasurer's office at Springfield, Illinois, as they severally became due to the said Illinois Grand Trunk Railway, or bearer, which said several coupons or interest warrants were exact copies of each other, except as to the said Nos., the Nos. of the coupons or interest warrants, and the date
4 of payment thereof; and that the following is an exact copy of coupon or interest warrant No. 251 of series No. 4:

$10.] WALNUT TOWNSHIP. [No. 251.

Railroad bond.

Interest warrant.

Supervisor of Walnut Township pay to bearer, January 1st, 1875, ten dollars, at the office of the State treasurer, Springfield, Illinois.

W. LANDERS,
Town Clerk.

M. KNIGHT, *Supervisor.*

(Across the face in red ink :) 4.

In and by which said several interest warrants or coupons, the defendant, by the name and style of Walnut Township, promises to pay the bearer hereof, according to the tenor and effect thereof, the several sums of money specified in said interest warrants or coupons, amounting to a large sum of money, to wit, the sum of $15,000.

And the plaintiff avers that after the making and delivering of the said several interest warrants or coupons as aforesaid, and before the maturity thereof, to wit, at the county, district, and State aforesaid, the plaintiff became for value paid the owner, possessor, and bearer thereof. By means whereof and by force of the statute in such cases made and provided, the defendant became liable to pay the plaintiff the said several sums of money in said several interest warrants or coupons mentioned, with interest thereon from the date when they were pay-
5 able to the date of their payment. And being so liable, in consideration thereof, the defendant afterwards, at, to wit, the day and year above mentioned, and at the district, county, and State aforesaid, and by the name of Walnut Township, undertook and then and there promised to pay the plaintiff said several sums of money in said interest warrants or coupons specified, according to the tenor and effect thereof, amounting in the aggregate to a large sum of money, to wit, the sum of $15,000, whenever it should be requested so to do. Yet the defendant has not paid said coupons or interest warrant, nor any part thereof, nor either of them, though often requested so to do.

And whereas also, the defendant, a body corporate situated in said district, county and State, to wit, on the 1st day of January, 1877, was

and still is indebted to the plaintiff in the further and other sum of $15,000, for money before that time laid out and expended by the plaintiff for the use of the defendant at his request; and in the still further and other sum of $15,000, for so much money before that time lent and accomodated by the plaintiff to the defendant, at its request, and for the further sum of $15,000 for so much money before that time had and received by the defendant to the use of the plaintiff, and in the
6 further sum of $15,000 for money found to be due from the defendant to the plaintiff on an account then and there stated between them. And in the further sum of $15,000 for so much money before that time due from the defendant to the plaintiff for interest upon and for the forbearance of divers large sums of money before then due from the defendant to the plaintiff forborne to the defendant for long spaces of time before then elasped, at the request of the defendant.

Wherefore the defendant became liable to the plaintiff to pay him the said sums of money mentioned in said coupons or interest warrants when the same were due and on presentation and request; and the defendant, on the day and year last above mentioned and at the county and district and State above named, in consideration then and there by the said name of Walnut Township promised the said several sums of money to the plaintiff on request, yet the defendant has not paid the same nor any part thereof nor either of said sums above named, to the damage of plaintiff of $15,000.

Wherefore he brings this suit, &c.

GEORGE A. SANDERS AND
T. S. Mc CLELLAND,
Att'ys for Plaintiff.

7 *Copy of interest warrant or coupon.*

No. 251. Series 4, due January 1, 1875, for $10.

$ 0.] WALNUT TOWNSHIP. [No. 251.

Railroad bond.

Interest warrant.

Supervisor of Walnut Township pay to bearer, January 1st, 1875, ten dollars, at the office of the State treasurer, Springfield, Illinois.

WM. SANDERS,
Town Clerk.
M. KNIGHT,
Supervisor.

The town of Walnut, in Bureau Co., Illinois, to J. H. Wade, Dr.

To money	laid out and expended	$15,000
" "	lent and accommodated	15,000
" "	had and received	15,000
" "	found due on account stated	15,000
" "	for interest and forbearance	15,000
1,010 coupons or interest warrants, at $10 each		10,100

And interest on the same until paid as follows, to wit:

20—Nos. 399, 398, 397, 396, 395, 394, 363, 362, 361, 360, 359,

358, 357, 356, 355, 354, 353, 347, 346, 300. Series 3, and due January 1, 1874, at $10 each $200 00

330—Nos. 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74,
8 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100; 1 to 50 inclusive; 101 to 150 inclusive; 151 to 200 inclusive; 301 to 342 inclusive; 374, 349, 348, 350, 351, 352, 358, 345, 343, 344, 346, 347, 354, 355, 353, 356, 357, 359 to 373 inclusive; 375 to 400 inclusive. Series 4 at $10 each, and due Jan'y 1st, 1875 ..... $3,300 00

330 of same numbers, as series 4 of series 5, due Jan'y 1st, 1876, at $10 ..... $3,300 00

330 of series 6, due Jan'y 1, 1877, at $10 ..... 3,300 00

1,010 coupons, at $10 10,100

And interest on same.

(Endorsed:) Filed May 5, '77. Wm. H. Bradley, Cl'k.

And on the same day, to wit, the 5th day of May, A. D. 1877, a writ of summons issued out of said clerk's office in said entitled cause, which said writ was returned by the marshal without service.

Afterwards, to wit, on the 17th day of May, A. D. 1877, an alias writ of summons issued out of said clerk's office in said entitled cause which said writ, together with the return of the marshal annexed hereto, is in the words and figures following, to wit:

Writ of summons.

Circuit court of the United States of America, northern district of Illinois, ss:

9 The United States of America, to the marshal of the northern district of Illinois, greeting:

We command you again to summon the town of Walnut, in Bureau County, Illinois, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of July next, to answer unto J. H. Wade of a plea of trespass on the case upon promises to his damage as it is alleged, of fifteen thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this 17th day of May, in the year of our Lord one thousand eight hundred and seventy-seven and of our Independence the 101st year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Special deputy's return.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

10 Know all men by these presents that I have appointed, and by

these presents do appoint, Thomas Forristall my true and lawful deputy to execute the annexed writ J. H. Wade vs. The Town of Walnut, &c., and to make return of the execution thereof according to law.

[SEAL.] JESSE S. HILDRUP,
United States Marshal for the Northern District of Illinois.

I have served the annexed writ in the following manner, to wit, by delivering a true copy thereof to O. L. Bearss, supervisor of the town of Walnut, therein named, on the 7 day of June, A. D. 1877.

B. H. CAMPBELL,
United States Marshal.
By THOS. FORRISTALL,
Special Deputy.

Thos. Forristall, being duly sworn, deposes and says that he served the annexed writ as stated in the foregoing return, and that the expense returned by him in addition to the fees was actually incurred and that the same is according to law. Sworn to before me this 9th day of June, A. D. 1877.

L. R. CROOKER,
Notary Public.

(Endorsed :) Filed June 13, 1877. Wm. H. Bradley, Clerk.

11 Afterwards, to wit, on the 3rd day of July, A. D. 1877, in the July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
v.
THE TOWN OF WALNUT. } Assumpsit.

On motion of the defendant, by its attorney, the time to plead herein is extended thirty days.

Afterwards, to wit, on the 27th day of July, A. D. 1877, in the said July term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
v.
THE TOWN OF WALNUT. } Assumpsit.

On motion of the defendant, by A. C. Story, esq., its attorney, the time for the defendant to plead is further extended to the first Monday of September next.

Afterwards, to wit, on the 3rd day of September, A. D. 1877, said defendant, by its attorney, filed in said clerk's office its demurrer to the declaration of said plaintiff in said entitled cause, which said demurrer is in the words and figures following, to wit

Demurrer to declaration.

12 United States circuit court, northern district of Illinois.

J. H. WADE
vs.
THE TOWN OF WALNUT.

And the said defendant, by A. C. Story and J. J. Herron, her attorneys, come and say that the said declaration of said plaintiff, and each and every count thereof, is insufficient in law, and this she is ready to verify; wherefore judgment is prayed, &c.

J. J. HERRON AND
A. C. STORY,
Def't's Att'ys.

(Endorsed:) Filed Sept. 3rd, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 1st day of October, A. D. 1877, in the adjourned October term of said court, in the record of the proceedings thereof, in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT, IN BUREAU COUNTY, Illinois. } Assumpsit.

Now comes the plaintiff, by his attorney, and confesses the de-
13 murrer of the defendant, and on his motion leave is given him to amend his declaration, and thereupon the defendant is hereby ruled to plead to the declaration as amended in ten days.

Afterwards, to wit, on the 10th day of October, A. D. 1877, said defendant, by its attorneys, filed in said clerk's office its pleas in said entitled cause, which said pleas are in the words and figures following, to wit:

Pleas.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court, July term A. D. 1877.

J. H. WADE
vs.
THE TOWNSHIP OF WALNUT.

And the said defendant, by J. J. Herron and A. C. Story, its attorney, comes and defends the wrong and injury, when, etc., and says that said town of Walnut did not undertake or promise in manner and form as the said plaintiff has in his declaration thereof complained against said town, and prays that this may be enquired of by the country, &c.

By J. J. HERRON AND
A. C. STORY,
Def't's Attorneys.

NORTHERN DISTRICT OF ILLINOIS,
Bureau County, ss :

14 O. L. Bearss, being duly sworn, says he is supervisor of said town, and that the foregoing plea is true in substance and in fact as he verily believes; also that the alleged endorsements upon the documents and papers sued upon herein are not the genuine endorsements of the parties respectively by whom they purport to be made as deponent verily believes.

O. L. BEARSS.

Sworn to this 18th day of July, A. D. 1877, before me.
[SEAL.] FRANK E. VANLIEW,
Notary Public for Walnut, Bureau Co., Ills.

2. And for a further plea in this behalf, the said defendant in like manner comes and says actio non, because she says that the bonds and coupons or warrants in the said declaration mentioned were and each of them was issued, or purport to be issued, by one Marvin Knight, as supervisor, and William Sanders, as town clerk of said town of Walnut; that the only authority therefor was a certain purported election attempted to be held by the inhabitants of said town, on the 6th day of August, A. D. 1870, under a purported petition dated July, 1870. That by the constitution of the State of Illinois, existing and in force on that day, it was made unlawful for any township or town to hold any election for any such pur-
15 pose or to make any subscription to the capital stock of or any aid, bonds or other evidences of indebtedness to any railway or corporation, or for any officer or person acting or purporting to act on behalf of any township or town; yet said pretended election was called and held at the times aforesaid, and said pretended bonds and coupons issued in defiance of said fundamental law and by the fraud of said pretended officers and the officers of said railway company therein named; said bonds were numbered and dated as alleged in said declaration, but were never issued or transferred to the plaintiff for value, and this the said defendant is ready to verify; wherefore judgment is prayed, etc.

By J. J. HERRON AND
A. C. STORY,
Def't's Attys.

3. And for a further plea in this behalf, said defendant in like manner comes and says actio non, because he says that the said several bonds and coupons in said declaration mentioned were and each thereof was issued under the purported authority of a special act of the general assembly of said State, approved March 25th, 1869; that an election was held by the voters or inhabitants of said town of Walnut on or about the 25th day of June, A. D. 1870, called pursuant to the provisions of said act, at which election said electors voted to au-
16 thorise the supervisor and town clerk of said town to subscribe thirty thousand dollars in the bonds of said town to the Illinois Grand Trunk Railway, which said subscription the directors of said last-named corporation refused to accept and never did accept, and thereupon a further petition was prepared calling for a new election, which was afterwards held on the 6th day of August, A. D. 1870, at which election it was voted to subscribe the sum of forty thousand dollars to the capital stock of said company in the bonds of said town of Walnut, which are the same bonds and coupons in the declaration

mentioned. And defendant further says that said township was only authorized by law to hold one election and its inhabitants were only authorized by law to vote upon one proposition, and when said first above-named election was held and the proposition voted on thereat was rejected and not accepted by said railroad company, the said authority conferred by said act of the legislature of Illinois became functus officio and exhausted, and no authority remained for calling or holding said so-called second election, but the same and the bonds and coupons aforesaid became and were null and void and so remain, and said last-named vote was not had or accepted; nor were said alleged bonds or coupons in fact accepted or issued or said subscription made
17 until after the adoption of the new constitution of the State of Illinois, of all which the said plaintiff had due notice, to wit, at the district aforesaid, and this the defendant is ready to verify. Wherefore judgment is prayed, etc.

By J. J. HERRON AND
A. C. LONG,
Def'ts Att'ys.

4. And for a further plea in this behalf the said defendant in like manner comes and says as to the said special counts, and each thereof, of said declaration actio non, because she says that the said several supposed causes of action, and eachthereof, in said declaration, and each special count thereof mentioned, arise solely from, depend upon, and consist only of the supposed bonds and coupons aforesaid and are not other or different in any manner. That said bonds and coupons, and each thereof, were and are void, and were executed without right or lawful authority by said alleged town officers to execute or issue the same on behalf of this defendant.

That the said pretended charter of said Illinois Grand Trunk Railway, and the alleged amendments thereto, recited in said alleged bonds and coupons, were not in fact and never had become laws of the State of Illinois or of any lawful or binding force therein, because de-
18 fendant says that the purported act of the general assembly of said State of Illinois purporting to go into effect or force March 25th, 1869, entitled "An act to amend an act incorporating the Illinois Grand Trunk Railway," was and is merely a bill introduced in the house of representatives of said general assembly at its session in 1869, by that title, and so passed by that body. That said bill was never reported to the senate of that body from said house, nor was any bill of that title either introduced into or passed by the senate of said general assembly at its session in said year, or at any other time. That by the constitution of said State existing and in force at the time when, &c., every private local bill must have a title, and the purport and object thereof shall be expressed therein, and also every bill before the same could become a law was required to be passed by the votes of a majority of the members of each house thereof, taken by ayes and noes, and recorded upon the records thereof.

And although the said pretended amendment is printed with the private laws of said session of said general assembly, yet the defendant in fact says that, by reason of the facts aforesaid, said bill never became a law, and no authority could be or was given thereby to the inhabitants of said town of Walnut to hold any election, or to any of the
19 officers thereof to call any election, for any such purpose, or to bind the faith or credit of said town by the issue of any bonds or coupons, but the said pretended bonds and the coupons thereto at-

tached were and are absolutely null and void, and so remain, to wit, at the district aforesaid, and this the defendant is ready to verify; wherefore judgment is prayed, etc.

By J. J. HERRON AND
A. C. STORY,
Deft's Att'ys.

(Endorsed:) Filed Oct. 10th, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 17th day of December, A. D. 1877, said plaintiff, by his attorney, filed in said clerk's office his demurrer to the second, third, and fourth pleas of said defendant in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer to second, third, and fourth pleas.

In the circuit court of the United States for the northern district of Illinois.

J. H. WADE
vs.
THE TOWN OF WALNUT. } Action of assumpsit.

And the said plaintiff comes and demurs to the said pleas of
20 the said defendant by it secondly, thirdly, and fourthly above pleaded, and to each of them, and says that the same and each of them, and the matters and things therein contained in manner and form as the same are above therein respectively pleaded and set forth, are not sufficient in law to bar him, the said plaintiff, from having his aforesaid action, and that he is not bound by law to answer the same or any of them, and this he is ready to verify; wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, &c.

And for special cause of demurrer to the pleas aforesaid, and to each of them, the said plaintiff shows to the court:

First. That each of said pleas purports to answer the whole of said declaration, and each count thereof, but in fact answers only the first count of said declaration.

Second. That each of said pleas amounts only to the general issue.

Third. That said fourth plea avers that the cause of action in said first count of said declaration is the same as the causes of action in the other counts of said declaration contained; that is to say, the coupons in said declaration specified.

Fourth. That said pleas and each of them are and is uncertain, informal, and insufficient.

THOMAS S. McCLELLAND,
Plaintiff's Attorney.

21 (Endorsed:) Filed Dec. 17, 1877. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 22d day of December, A. D. 1877, in the December term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. A. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

Now comes the plaintiff, by his attorney, and with notice to the de-

fendant's attorney, submits to the court the demurrer of the plaintiff to second, third, and fourth special pleas herein, and the court takes the same under advisement.

Afterwards, to wit, on the 3rd day of January, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
v.
THE TOWN OF WALNUT, IN BUREAU COUNTY, Illinois.

22 The court having considered and being now fully advised upon the demurrer of the plaintiff to the second, third, and fourth pleas herein, sustains said demurrer, the court being of the opinion that the matter specially pleaded can be given in evidence under the plea of the general issue.

Afterwards, to wit, on the 15th day of January, A. D. 1878, said plaintiff, by his attorneys, filed in said clerk's office his replication to the first and fourth pleas of said defendant in said entitled cause, which said replication is in the words and figures following, to wit:

Replication to first and fourth pleas.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States. December term, A. D. 1877.

J. H. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

The plaintiff, as to the said first plea of the defendant, and whereof it hath put itself upon the country, doth the like.

THOMAS S. McCLELLAND,
GEORGE A. SANDERS,
Attorneys for said Plaintiffs.

And for a replication to the plea of the said defendant by it fourthly above pleaded, the said plaintiff says precludi non, be-
23 cause he says that the said charter of the said Illinois Grand Trunk Railway and the said amendments thereto in said fourth plea specified, and each of them, were in fact and did become and are laws of the said State of Illinois, and were and are of lawful and binding force in said State of Illinois, and that the act of the general assembly of said State of Illinois purporting to go into effect or force on the 25th day of March, A. D. 1869, as specified in said fourth plea, was not and is not merely a bill introduced in the house of representatives of said general assembly and passed by that body only, as is averred in said fourth plea, but said bill was duly reported to the senate of said general assembly at its session of said year and was duly passed by said senate at said session, and said bill did become a law, to wit, on the 25th day of March, A. D. 1869.

And this said plaintiff prays may be inquired of by the country, &c.

THOMAS S. McCLELLAND,
Att'ys for said Plaintiff.

(Endorsed:) Filed Jan'y 15, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 17th day of January, A. D. 1878,
24 said parties, by their attorneys, filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois:

Circuit court of the United States. December term, A. D. 1877.

J. H. WADE
vs.
THE TOWN OF WALNUT.

It is hereby stipulated that said cause may be passed upon the first call of the docket to the second call.

The defendant admits that the bonds and coupons sued on are signed by M. Knight, supervisor of said town, and William Landers, town clerk of said town, and that the signatures thereto are genuine signatures of said supervisor and town clerk, and that they were the supervisor and town clerk respectively at time said bonds and coupons were executed.

Defendant will further accept one day's notice if requested by plaintiff and take the deposition of George O. Ide or any other witness to prove the signature of the execution of the endorsers on said bonds or coupons.

Jan'y 17, 1878.

J. J. HERRON,
A. C. STORY,
D'f'ts Att'ys.
THOS. S. McCLELLAND,
Att'y for Pl'ff.

25 (Endorsed:) Filed Jan'y 17, 1878. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 8th day of February, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT, IN BUREAU COUNTY, Illinois. } Assumpsit.

This cause having this day been called for trial, now comes the plaintiff, by his attorney, and upon issue joined upon the plea herein, on motion of the plaintiff's attorney, thereupon come a jury of good and lawful men, to wit, James H. Farwell, Ira C. Mosier, Albert Evans, Nathan-

iel Vose, H. W. Thornton, Elias Braman, Thornton G. Haines, W. R. Guild, C. A. Baker. Charles P. Lyman, John H. Bowers, and William Soper, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing the evidence on the part of the plaintiff and receiving the instructions of the court, the jury returned the following verdict, to wit: We, the jury, find the issue for the plaintiff
26 and assess his damages to the sum of eleven thousand four hundred and seventy dollars. It is thereupon considered and adjudged by the court that the plaintiff do have and recover of the defendant the said sum of eleven thousand four hundred and seventy dollars, his damages so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of dollars and cents.

Afterwards, to wit, on the 11th day of February, A. D. 1878, said defendant, by its attorney, filed in said clerk's office its motion for a new trial of said entitled cause, which said motion is in the words and figures following, to wit:

Motion for a new trial.

U. S. C. court, N. dist. Ill's.

J. H. WADE
v.
TOWN OF WALNUT.

And the said defendant, by its attorney, A. C. Story, suggests the death of Hon. J. J. Herron, one of the attorneys of record in this cause, and moves the court to set aside the verdict and judgment in this cause, and for a new trial of the cause upon reasons and affidavits hereafter to be filed.

Feb'y 11, 1878.

ALLAN C. STORY,
Att'y and of Counsel for Def't.

27 (Endorsed:) Filed Feb'y 11, 1878. Wm. H. Bradley, cl'k.

Afterwards, to wit, on the 18th day of February, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

The defendant having heretofore filed its motion to set aside and vacate the judgment and verdict entered herein on the eighth instant, and for a new trial of this cause, and submitted the same upon affidavit filed, and the court having considered and being now sufficiently advised thereon, overrules said motion.

Afterwards, to wit, on the 25th day of February, A. D. 1878, in the said December term, A. D. 1877, of said court, in the record of the proceedings of said court in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

28 Now come the parties, by their attorneys, and on motion of the defendant, by its attorney, leave is given it to make its defence herein before the court, a jury being waived, the judgment to stand as security.

Afterwards, to wit, on the 12th day of March, A. D. 1878, said parties, by their attorneys, filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of the United States.

J. H. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

It is hereby stipulated and agreed by and between the undersigned attorneys for the plaintiff and defendant above named, that this cause shall be submitted to the court—the Hon. Henry W. Blodgett—without a jury for trial, and the judgment rendered herein shall be binding upon the parties aforesaid as if upon the verdict of a jury, subject to the right of either party to prepare bill of exceptions and sue out a writ of error to review the record and proceedings herein as in other cases.

March 12, 1878.

THOMAS S. McCLELLAND,
Att'y for Pl'ff.

29 ALLAN C. STORY,
Att'y for Def't.

(Endorsed:) Filed March 12, 1878. Wm. H. Bradley, cl'k.

On the same day, to wit, on the 12th day of March, A. D. 1878, in the adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT. } Assumpsit.

Now come the parties, by their attorneys, and under the order entered herein on the twenty-fifth day of February last giving the defendant leave to make its defence to this suit, upon issue joined by agreement of the parties as per stipulation filed, they waive the intervention of a jury, and for trial put themselves upon the court, and after hearing the evidence and the arguments of the defendant's counsel the court takes the same under advisement.

Afterwards, to wit, on the 22d day of March, A. D. 1878, in the said adjourned March term of said court, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blod-
30 gett, district judge, is the following entry, to wit:

J. H. WADE
vs.
THE TOWN OF WALNUT, IN BUREAU COUNTY, Illinois. } Assumpsit.

Now comes the plaintiff, by Thomas S. McClelland, esq., his attorney, and the court having considered and being now sufficiently advised upon the defence made to this suit by the defendant, now orders that the judgment and verdict entered herein on the eighth day of February last be set aside and vacated, and now upon issue joined herein by agreement of the parties by their attorneys, as per stipulation filed, they waive the intervention of a jury, and for trial put themselves upon the court, and thereupon, by leave of the court, the plaintiff, by his attorney, takes a nonsuit as to all the coupons taken from the bonds mentioned in the declaration herein, numbered from three hundred and one to four hundred, inclusive, and leave is given him to withdraw said coupons from the further consideration of the court, and upon the evidence and agreements herein the court finds the issue for the plaintiff, and assesses his damages to the sum of seven thousand eight hundred and ninety-five dollars, as per special finding filed herein.

It is thereupon considered and adjudged by the court that the
31 plaintiff do have and recover of the defendant the said sum of seven thousand eight hundred and ninety-five dollars, his damages, so as aforesaid assessed, together with his costs and charges in this behalf expended, amounting to the sum of one hundred and forty dollars and twenty cents.

On the same day, to wit, the 22d day of March, A. D. 1878, there was filed in said clerk's office a special finding of said court in said entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

United States circuit court, northern district of Illinois, March term, A. D. 1878.

J. H. WADE
vs.
THE TOWN OF WALNUT.

The above entitled cause having by agreement of the parties in writing duly filed been submitted to the court for trial without the intervention of a jury, the following facts are specially found from the evidence given on said trial:

First. That said defendant town, by its town clerk and supervisor, did, some time in the month of October, A. D. 1870, make its four hundred bonds for the sum of one hundred dollars each, and num-
32 bered consecutively from one to four hundred, inclusive, amounting in the aggregate to the sum of forty thousand dollars, said bonds bearing interest at the rate of ten per cent. per annum, payable

annually, and the principal thereof payable to the Illinois Grand Trunk Railway or bearer on the first day of January, A. D., 1881, and dated January 1, 1871, said interest being evidenced by ten interest warrants or coupons for ten dollars each, payable to bearer and attached to said bonds, as set out in the declaration in this case. That said bonds recited on their face that they were issued to said Illinois Grand Trunk Railway by authority of an act of the legislature of the State of Illinois, approved March 25, 1869, entitled "An act to amend an act entitled 'An act to incorporate The Illinois Grand Trunk Railway,'" and "in pursuance of a vote of the people of said town, had and taken June 25, 1870," being the same bonds described in plaintiff's declaration. That the coupons described in said declaration were cut from the first three hundred of said bonds, and are all due and unpaid.

Second. That on some time in the month of January, A. D. 1871, the supervisor and town clerk of said town, acting for and in behalf of said town, subscribed for forty thousand dollars of the capital stock of said Illinois Grand Trunk Railway, and issued and delivered said four
33 hundred bonds to said railway in payment of said subscription, and that within ten or fifteen days therefrom the said railway corporation sold said bonds for value, and applied the proceeds to the construction of its railroad through said town; and that said plaintiff, on the day of September, A. D. 1871, bought the bonds from which the coupons sued on were detached, and also all the coupons thereto attached and unpaid, in good faith, in the New York market, and paid therefor in money at the rate of ninety-two and one-half (92½) cents on the dollar, without actual notice of any defence whatever against said bonds or coupons.

Third. That the said act of the legislature of the State of Illinois, approved March 25, 1869, entitled "An act to amend an act to incorporate the Illinois Grand Trunk Railway," was duly and constitutionally passed by the general assembly of said State of Illinois.

Fourth. That the voters of said town, at an election duly called and held in said town, pursuant to the provisions of said act, on the 25th day of June, 1870, voted that said town would subscribe for thirty thousand dollars of the capital stock of said railway, and in payment therefor issue the bonds of said town for the amount of said stock, bearing ten per cent. interest annually, and the principal sum payable in ten years from their date.

34 That on the 6th day of August, 1870, at another election called and held in pursuance of the requirements of said act, the electors of said town voted to subscribe for ten thousand dollars of the capital stock of said railway, in addition to the thirty thousand dollars voted on the 25th day of June, 1870, to be paid for in bonds of said town, bearing the same rate of interest and payable at the same time as the bonds to be issued for said thirty thousand dollars subscription.

Fifth. That the coupons offered in evidence and upon which judgment is rendered in this case were cut from bonds of said issue numbered from one to three hundred.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed March 22, 1878. Wm. H. Bradley, clk.

And on the same day, to wit, the 22d day of March, A. D. 1878, on the trial of said cause, the following exceptions were taken and allowed by the court and made of record in said entitled cause, in the words and figures following, to wit:

Bill of exceptions.

J. H. WADE,
vs.
THE TOWN OF WALNUT. } Assumpsit.

35

Bill of exceptions.

Be it remembered that on the 12th day of March, A. D. 1878, the same being one of the judicial days of the March term of this court, A. D. 1878, said parties came again, by their attorneys, and said cause came on for trial before Honorable Henry W. Blodgett, sitting as circuit judge, to whom the issues herein were then and there submitted by stipulation of the parties, a jury being waived by written stipulation duly filed; whereupon the plaintiff, to maintain the issues on his part, offered in evidence a certain copy of an act of the legislature of the State of Illinois, as follows:

AN act to amend an act entitled "An act to incorporate The Illinois Grand Trunk Railway."

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that any city, incorporated town, or township which may be situated on or near the route of the Illinois Grand Trunk Railway west of the city of Mendota via Prophetstown to the Mississippi River may become subscribers to the stock of said railway, and may issue bonds for the amount of such stock so subscribed with coupons for interest thereto attached under such limi-
36 tations and restrictions and on such conditions as they may choose and the directors of said company may approve the proposition for said subscription, having been first submitted to the inhabitants of such city, town or township, and approved by them; and upon application of any ten voters of any city, town or township, as aforesaid, specifying the amount to be subscribed, and the conditions of said subscriptions, it shall be the duty of the clerk of such city, town or township immediately to call an election, in the same manner that other elections for said city, town or township are called, for the purpose of determining whether said city, town, or township will subscribe to the stock of said railway; and if a majority of said votes shall be "for subscription," when the corporate authorities of said city, town or township, and the supervisor and town clerk of said township so voting, shall cause said subscription to be made; and upon its acceptance by the directors of said company shall cause bonds to be issued in conformity with said vote, which bonds shall not be of less denomination than one hundred dollars, and in no case bear a higher rate of interest than ten per cent., providing no such election shall be held until
37 at least thirty days' previous notice thereof shall be given in the manner prescribed by law.

SECTION 2. It shall be the duty of the proper authorities of any city, town or township, issuing bonds as aforesaid, to make all necessary arrangements and provide for the prompt payment of all interest and other liabilities accruing thereon, and to levy such taxes as may be necessary therefor as other taxes are levied by them.

SECTION 3. This act shall be liberally construed for the purposes in-

tended and expressed the rein, and shall be held to be a public act, and shall be in force from and after its passage.

F. COWRIE,
Speaker of the House of Representatives.
J. DOUGHERTY,
Speaker of the Senate.

Approved March 25, 1869.

JOHN M. PALMER,
Governor.

UNITED STATES OF AMERICA,
State of Illinois, ss:

OFFICE OF SECRETARY.

I, Edward Rummel, secretary of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law of the State of Illinois entitled "An act to amend an act entitled 'An act to incorporate The Illinois Grand Trunk Railway,'" approved March 25,
38 1869, as the same is contained in the original act now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 16th day of August, A. D. 1872.

EDWARD RUMMEL,
Secretary of State.

And also ten hundred and ten (1,010) coupons referred to in the declaration, each of which except its number was in the words and figures following, that is to say:

$10.] WALNUT TOWNSHIP. [No. 251

Railroad bond.

Interest warrant.

Supervisor of Walnut Township pay to bearer, January 1st, 1875, ten dollars, at the office of the State treasurer, Springfield, Illinois.

W. LANDERS,
Town Clerk.

M. KNIGHT,
Supervisor.

(Across the face:) 4.

Each of said coupons respectively was objected to by counsel for defendant in apt time, upon the ground—

First. That the same are not signed by the corporate authorities of said town. It was conceded that the signatures thereto were the genuine signatures of the supervisor and town clerk of said town.

Second. Said coupons were not shown to have been presented to the proper officers or demand of payment made thereon and notice
39 to the drawer before suit.

Third. Said coupons, 1010 in number, are detached from and not annexed to any bond, and the absence of said bond is not accounted

for, and the same are not negotiable paper sufficient to base an action upon.

Fourth. Said coupons never were endorsed and are not negotiable by delivery.

But the court overruled each and every of said objections and received said coupons and each thereof in evidence. To each of which said several decisions said defendant's counsel did then and there duly and separately except.

The plaintiff also offered in evidence bond numbered 300 as a true and exact copy of all the bonds executed by the defendant from which the interest coupons sued on were detached, except as to the numbers, they being numbered corresponding to the numbers on the coupon set out in the declaration.

Number 300.] UNITED STATES OF AMERICA, STATE OF ILLINOIS. [100 dollars.

Walnut Township railroad bond.

Know all men by these presents, that the township of Walnut, in the county of Bureau and State of Illinois, is indebted to the Illinois Grand Trunk Railway or bearer in the sum of one hundred dollars, law-
40 ful money of the United States, which the said township of Walnut promises to pay to the said Illinois Grand Trunk Railway or to the bearer hereof, on the first day of January, in the year one thousand eight hundred and eighty-one, at the office of the State treasurer in Springfield, Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1871, at the rate of ten per centum per annum, payable annually at the office of the State treasurer in Springfield, Illinois, on the first day of January in each year, on the presentation and surrender of the annexed coupons as they severally become due.

This bond is issued under add by virtue of the charter of said Illinois Grand Trunk Railway and amendment thereto and other laws of the State of Illinois, all in accordance with the vote of the electors of said township at the special election held June 25, A. D. 1870, in accordance with said charter and amendment and laws.

In witness whereof the said township of Walnut has caused these presents to be signed by the supervisor and clerk of said township, this first day of January, one thousand eight hundred and seventy-one.

WM. LANDERS,
Town Clerk.

M. KNIGHT,
Supervisor.

(Across the face :) $100.

(Endorsed :) The Illinois Grand Trunk Railway, by A. H. Castle, president. Auditor's office, Illinois, Springfield, April 15th, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns" in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

Which was then and there objected to by defendant as incompetent. Objection overruled and defendant's counsel excepted.

41 Plaintiff's counsel also offered evidence tending to show that the endorsement appearing on said bond 300 was in the handwriting of A. H. Castle, who was the acting president of the Illinois Grand Trunk Railway in January, 1871, of which L. C. Ellsworth was secretary and treasurer. That said endorsement was made in Chicago in the beginning of 1871. That said bonds were signed some time in the fall of 1870 by said supervisor and town clerk.

And also the deposition of J. H. Wade to the effect that he purchased the bonds of the defendant, amounting to $32,100, with the interest coupons attached, September 27, 1861, from the firm of Jacob R. Shipherd and Co., brokers, in New York; that he paid cash for said bonds at the rate of 92½ per cent. of their face value, and also accrued interest to that time, and had no notice of any defence thereto.

That there are 321 of said bonds of $100 each, being dated January 1, 1871, and drawing interest at the rate of ten per cent. per annum, payable annually, the principal being due January 1, 1881. That the bonds so purchased are numbered from 1 to 200 inclusive, 258 and 281 to 400 inclusive. The coupons accompanying the bonds were paid at the time of their maturity up to and excepting the coupons upon

42 which this suit is brought. Some of the coupons were paid at the office of the State treasurer at Springfield, Illinois, and some at the Illinois State agency in New York. That he is the plaintiff in this suit, and is the owner of all the bonds above referred to and the coupons attached to the same.

That he is not aware of any defence to the payment of said bonds or the interest thereon nor is he aware that the defendant claims any defence to them.

I was assured that the bonds were valid and legally issued. I may or may not have been shown legal opinions to that effect. My attention was called to the certificate of the auditor of state of the State of Illinois upon the back of said bonds. That certificate and what I was informed at the time satisfied me of their validity. I had never looked at the records, and heard of nothing that looked like repudiation. No coupons were past due when I purchased the bonds.

And rested the case on his part.

Counsel for defendant objected in apt time to the testimony of said plaintiff as to the numbers upon the bonds, their date and rate of interest, the amount and time of payment, as secondary; but the court received said evidence, and defendant's counsel excepted.

43 And thereupon the defendants introduced evidence tending to show that on the 25th day of June, A. D. 1870, a special election was held in said town of Walnut, at which it was voted that said town should subscribe for and take three hundred shares of one hundred dollars each of the capital stock of the Illinois Grand Trunk Railway, to be paid for in the bonds of said township, due in ten years from date of issue, with interest at ten per centum per annum payable annually.

That there should be no call upon said township to issue said bonds, except five per cent. thereof, until stock enough has been subscribed to grade, bridge, and tie that part of the road lying between the town of Mendota, La Salle County, and the town of Prophetstown, in Whiteside County, Illinois, nor until a contract has been made with the Chicago, Burlington and Quincy Railway Company to take or cause the first

mortgage bonds of the Illinois Grand Trunk Railway Company to be sold for an amount equal to twelve thousand dollars per mile, in order to procure the necessary iron and materials to finish up said portion of said road (it being understood that said five per cent. is to be used in the purchase of the road bed of the old Illinois Grand Trunk Railway, lying between said town of Mendota and Albany, Whiteside County), nor until said road should be located through said township with a depot
44 located on the southeast quarter of section eight in the town of Walnut, the bonds to be called for pro rata with other township subscriptions as the requirement of the work demands; the bonds to be subscribed for on consideration that the subscription must be accepted by said company within three years, and the foregoing conditions complied with and the road completed, for which the company is to give bonds to the township officers before any bonds are issued by said township.

Also, evidence tending to show that said Illinois Grand Trunk Railway by its directors, on the 3rd day of August, 1870, notified said town officers as follows, viz:

CHICAGO, *Aug. 3rd*, 1870.

To the supervisor, town clerk, and legal voters of the towns of Lamoille, Walnut, Prophetstown, and Tampico, along the line of the Illinois Grand Trunk Railway.

We, directors of the said company, will accept forty thousand dollars from Lamoille, Walnut, and Prophetstown, and twenty thousand dollars from the town of Tampico, as township subscriptions in full satisfaction as the acts of said township to the said Ill. G. T. R. Co.

Dated August 3rd, 1870.

J. V. THOMPSON,
L. C. ELLSWORTH,
A. J. WATSON,
Directors.

Which was, on the 6th day of August, 1870, received and recorded upon the records in the town clerk's office of said town of Walnut
45 That no vote was taken upon said last-named proposition. of $40,000, but afterwards, to wit, August 6th, 1870, a special election was called and held in said town of Walnut, at which the sum of ten thousand dollars additional to the $30,000 already voted was voted for the like amount of the capital stock of said Illinois Grand Trunk Railway, the same to be paid for in the bonds of said township coming due ten years from date of their issue, and bearing interest at ten per centum per annum, principal and interest payable in New York City, the bonds not to be delivered until sufficient stock is subscribed to build the road from Mendota to Brewersville, nor until the cars are running thereon to said Brewersville in said Walnut township and a depot built on the old grounds in said town; also, that 400 bonds of $100 each were issued by the town clerk and supervisor to said company and dated the first day of January, 1871, numbered consecutively from one to four hundred, of which the coupons herein formed a part.

Defendant's counsel thereupon offered evidence tending to show that an election was called and held under the provisions of said act in the bonds herein mentioned on the 21st day of August, A. D. 1869, for the purpose of voting upon a proposition for subscribing three hun-
46 dred shares of $100 each to the capital stock of the Illinois Grand Trunk Railway, and to issue bonds therefor to the number of 300

of the denomination of $100 each, bearing interest at the rate of ten per cent. per annum from their date, the same to become due and payable, one-fifth five years after date, one-fifth to become due each succeeding year thereafter according to numerical order, the principal payable at the office of the supervisor in said town, said bonds to issue and be delivered to the proper officers of said company only on conditions—

1st. Said railroad to be first completed and cars running thereon for the purpose of carrying freight and passengers from Mendota, Illinois, to Brewersville, Illinois, in said township of Walnut.

2nd. That a depot be located at said village of Brewersville on the grounds as surveyed, laid out, and established on the S. E. ¼ of section eight in said township of Walnut, and suitable depot and station built thereon.

3rd. That said railway should be built on the old grade of the Illinois Grand Trunk Railway Company through said township of Walnut; which said election resulted in 144 votes for and 8 votes against said proposition.

Said defendant also offered in evidence, viz, certified copies from the records, that on November 12th, 1872, the town of Walnut,
47 defendant, and Orson L. Bearss, supervisor thereof, filed a bill of complaint against the county clerk of Bureau County, the county treasurer thereof, the collector of said town of Walnut, and the auditor of public accounts of the State of Illinois, and their successors in office, in the circuit court of Bureau County, Illinois, alleging among other things the several matters herein above mentioned as offered in evidence by said defendant, alleging that the conditions mentioned in said several votes had never been complied with by said Illinois Grand Trunk Railway, but that said bonds and coupons therein mentioned had been collusively and unlawfully issued to said company, and praying an injunction, &c. That process was served upon defendants, and an injunction issued in said cause as prayed for, restraining defendants and their successors in office from collecting from the taxpayers of said town any of the tax levied for interest upon said bonds or from paying the same over to the State treasury of Illinois, and from thereafter certifying any tax to pay interest or principal on said purported bonds, or from extending any tax to be thereafter levied in relation to said railroad bonds upon the tax lists for said town of Walnut or against any property therein; that on August 24, 1874, upon hearing had, said in-
48 junction was made perpetual against each of said parties, respectively, and their successors in office, which evidence was admitted by the court.

Counsel for defendant also read in evidence a certified copy of the journals of the legislature of the State of Illinois, and certificate of the secretary of state thereof, under the great seal of State, as follows:

House journal.

* * * * * * *

MONDAY, *January* 11, 1869.

* * * * * * *

Mr. Dinsmoor introduced a bill (H. B. No. 231) for an act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

Which was read a first time and ordered to a second reading.

On motion of Mr. Dinsmoor, the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

WEDNESDAY, *February* 3, 1869.

* * * * * * *

Mr. Bailey, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back and recommended its passage.

The report of the committee was concurred in and the bill
49 ordered to a third reading.

* * * * * * *

SATURDAY, *February* 6, 1869—two o'clock p. m.

* * * * * * *

A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" was read a third time, and the question being, "Shall this bill pass?" it was decided in the affirmative. Yeas, 65; nays, 2.

Those voting in the affirmative are—

Messrs. Bond.	Messrs. Gilmore.	Messrs. Payne.
Bothwell.	Green.	Perry.
Bradshaw.	Gundlach.	Phelps.
Brookhart.	Halley.	Porter.
Burgess.	Hanna.	Ravlin.
Burke.	Hopkins.	Reed.
Burnett.	Honabin.	Reynolds.
Cahaway.	Kinyon.	Ross, of Fulton.
Casey.	Knickerbocker.	Rush.
Challis.	Landrigan.	Saltonstall.
Childs.	Laning.	Sickles.
Collins.	Lawson.	Smith.
Cook, of Lake.	Marsh.	Stanley.
Cook, of Sangamon.	McCutcheon.	Strawn.
Cooper.	Miller, of St. Clair.	Swigart.
Coy.	Miller, of Cook.	Talbott.
Deitz.	Miltower.	Thompson.
Denison.	Morgan.	Voris.
Dinsmoor.	Morse.	Wiley.
Ewing.	Munson.	Willis.
Fuller.	Nase.	Mr. Speaker.
Gale.	Palmer.	

50 Messrs. Bailey and Woodson voted in the negative.

Ordered, That the title be as aforesaid and that the clerk inform the senate thereof, and ask their concurrence therein.

SATURDAY, *March* 6, 1869.

* * * * * * *

A message from the senate by Mr. Boggs:

Mr. SPEAKER: I am directed to inform the house of representatives

that the Senate has concurred with them in the passage of house bills of the following titles to wit, with amendments:

* * * * * * *

House bill No 231, a bill for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway.'"

* * * * * * *

In which amendments I am instructed to ask the concurrence of the house of representatives.

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" as amended by the senate, was taken up, and the question being "Will the house concur with the senate in the adoption of their amendments thereto?"

It was decided in the affirmative. Yeas, 66; nays, 00.

51 Those voting in the affirmative are:

Messrs. Bailey	Messrs. Bradshaw	Messrs. Challis
Beason	Burgess	Childs
Bond	Burke	Collins
Bothwell	Burnett	Cook of Lake.
Cook, of Sagamon	McCutcheon	Ross, of St. Clair
Cooper	Merritt	Ross, of Fulton
Coy	Miller, of St. Clair	Rush
Deitz	Miller, of Cook	Saltonstall
Dinsmoor	Miltower	Scroggs
Downing	Morgan	Sickles
Elliott	Morse	Smith
Ewing	Munson	Stanley
Frew	Nase	Sumner
Fuller	Palmer	Swigart
Gale	Parker	Talbott
Gayford	Payne	Taylor
Halley	Perry	Thompson
Hanna	Phelps	Whiting
Hopkins	Porter	Wiley
Honabin	Ravlin	Willis
Kerr	Reed	Young
Marsh	Reynolds	Mr. Speaker.

52 Ordered, That the title be as aforesaid and that the clerk inform the Senate thereof.

* * * * * * *

WEDNESDAY, *April* 14, 1869.

* * * * * * *

Mr. Frew, from the joint committee on enrolled and engrossed bills begs leave to report that the bills of the following titles have been correctly enrolled, and on the 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231, "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A message from the governor by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the house of representatives that he has approved and signed bills of the following titles, viz:

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

Senate journal.

* * * * * * *

MONDAY, *February* 8, 1869.

* * * * * * *

53 A message from the house of representatives, by Mr. Halstead:

Mr. SPEAKER: I am directed to inform the senate that the house of representatives has passed bills of the following titles, to wit:

* * * * * * *

A bill (H. B. No. 231) *a bill* for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway.'"

* * * * * * *

TUESDAY, *February* 9, 1869—half past two o'clock p. m.

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway,'" was taken up, read a first time, and ordered to a second reading.

On motion of Mr. Epler,

The rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

THURSDAY, *March* 4, 1869—half past two o'clock p. m.

* * * * * * *

Mr. Fuller, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back amended, and recommended its passage as amended.

54 The report of the committee was concurred in and the bill ordered to a third reading.

* * * * * * *

FRIDAY, *March* 5, 1869.

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway,'" was read a third time, and the question being "Shall this bill pass?" it was decided in the affirmative—yeas, 25; nays, 00.

Those voting in the affirmative are:

Messrs.	Addams	Messrs.	Munn
"	Boyd	"	Nicholson
"	Casey	"	Patton
"	Chittenden	"	Pinckney
"	Crawford	"	Shepherd
"	Dore	"	Snapp
"	Epler	"	Strevell
"	Flagg	"	Tincher
"	Fort	"	Turney
"	Fuller	"	Van Dorston
"	Harlan	"	Ward
"	McManus	"	Woodson
"	McNulta		

Ordered, That the title be as aforesaid, and the secretary inform the house of representatives thereof and ask their concurrence therein.

WEDNESDAY, *April* 14, 1869.

* * * * * * *

55 A message from the governor, by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the senate that he has approved and signed bills of the following titles, viz:

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

Mr. Foot, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been, on the 6th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231, for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

* * * * * * *

UNITED STATES OF AMERICA,
State of Illinois, ss:

OFFICE OF SECRETARY.

I, George H. Harlow, secretary of the State of Illinois, do hereby certify that the foregoing is a true and complete copy of the journals of the senate and house of representatives of the 26th general assembly of the State of Illinois so far as the same relate to the passage of house
56 bill No. 231 for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway.'"

And I further certify that I am unable to find any evidence of the passage in said senate of an act under the title of "An act to amend an act entitled 'An act to incorporate The Illinois Grand Trunk Railway.'"

Said journals are now on file in this office.

In witness whereof I hereto set my hand and affix the great seal of State, at the city of Springfield, this 16th day of November, A. D. 1877.

[SEAL.] GEO. H. HARLOW,
Sec'y of State.

And rested the case for defendant.

Whereupon counsel for plaintiff read in evidence a copy of the same journals from the same office in the words and figures following, to wit:

House journal.

* * * * * * *

MONDAY, *January* 11, 1869.

* * * * * * *

Mr. Dinsmoor introduced a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" which was read a first time and ordered to a second reading.

57 On motion of Mr. Dinsmoor the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * *

WEDNESDAY, *February* 3, 1869.

* * * * * * *

Mr. Bailey, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back and recommended its passage.

The report of the committee was concurred in and the bill ordered to a third reading.

* * * * * * *

SATURDAY, *February 6th*, 1869.

* * * * * * *

2 O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" was read a third time, and the question being "Shall this bill pass?"

It was decided in the affirmative—yeas, 65; nays, 02.

Those voting in the affirmative are—

Messrs. Bond	Gilmore	Payne
Bothwell	Greene	Perry
Bradshaw	Gundlach	Phelps
Brookhart	Nalley	Porter
Burgess	Hanna	Ravlin

58

Burke	Hopkins	Reed
Burnett	Honabin	Reynolds
Callaway	Kinyon	Ross, of Fulton
Casey	Knickerbocker	Rush
Chalies	Landrigan	Saltonstall
Childs	Laning	Sickles
Collins	Lanson	Smith
Cook, of Lake	Marsh	Stanley
Cook, of Sangamon	McCutcheon	Strawn
Cooper	Miller, of St. Clair	Swigart
Coy	Miller, of Cook	Talbott
Dietz	Miltower	Thompson
Denison	Morgan	Voris
Dinsmoor	Morse	Wiley
Ewing	Munson	Willis
Fuller	Hase	Mr. Speaker.
Gale	Palmer	

Those who voted in the negative are—
Messrs. Bailey and Woodson.
Yeas, 65; nays, 2.
Ordered, That the title be as aforesaid, and that the clerk inform the senate thereof and ask their concurrence therein.

* * * * * * *

SATURDAY, *March* 6, 1869.

* * * * * * *

A message from the senate by Mr. Boggs:
MR. SPEAKER: I am directed by the house of representatives that the senate has concurred with them in the passage of house bills of the following titles, to wit, with amendments:

* * * * * * *

59 H. B. No. 231. A bill for an act to amend an act entitled "An act to incorporate the Grand Trunk Railway."

* * * * * * *

In the adoption of which amendments I am instructed to ask the concurrence of the house of representatives.

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A bill (H. B. No. 231) for an act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway," as amended by the senate, was taken up; and the question being,
Will the house concur with the senate in the adoption of their amendments thereto?
It was decided in the affirmative—yeas, 66; nays, 0 0.
Those who voted in the negative are—

Messrs. Bailey	Gale	Porter
Benson	Gaylord	Ravlin
Bond	Halley	Reed
Bothwell	Hanna	Reynolds
Bradshaw	Hopkins	Ross, of St. Clair
Burgess	Howabin	

	Burke	Kerr	Ross, of Fulton
	Burnett	Marsh	Rush
	Challis	McCutcheon	Saltonstall
	Childs	Merritt	Scroggs
	Collins	Miller, of St. Clair	Sickles
	Cook, of Lake	Miller, of Cook	Smith
	Cook, of Sangamon	Miltower	Stanley
	Cooper	Morgan	Sumner
60	Coy	Morse	Swigart
	Dietz	Munson	Talbott
	Dinsmoor	Nase	Taylor
	Downing	Palmer	Thompson
	Elliott	Parker	Whiting
	Ewing	Payne	Wiley
	Frew	Perry	Willis
	Fuller	Phelps	Young
			Mr. Speaker.

Yeas, 66; nays, 00.

Ordered, That the title be as aforesaid, and that the clerk inform the senate thereof.

* * * * * * *

WEDNESDAY, *April* 14, 1869.

* * * * * * *

Mr. Frew, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been correctly enrolled, and on this 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

House bill No. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

* * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * *

A message from the governor by E. B. Harlan, private secretary:

61 Mr. SPEAKER: I am directed by the governor to inform the house of representatives that he has approved and signed bills of the following titles, viz:

H. B. No. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

* * * * * * *

Senate journal.

* * * * * * *

MONDAY, *February 8th*, 1869.

* * * * * * * * *

A message from the house of representatives by Mr. Halsted:

Mr. SPEAKER: I am directed to inform the senate that the house of representatives has passed bills of the following titles, to wit:

* * * * * * * * *

H. B. 231.

A bill for an act to amend an act entitled "An act to incorporate the Grand Trunk Railway."

* * * * * * * * *

TUESDAY, *February 9th*, 1869.

* * * * * * * * *

HALF PAST TWO O'CLOCK P. M.

* * * * * * * * *

House bill (No. 231) for "An act to amend an act entitled 'An act to incorporate the Grand Trunk Railway'" was taken up, read a first time, and ordered to a second reading.

62 On motion of Mr. Epler the rule was dispensed with, the bill read a second time, and referred to the committee on railroads.

* * * * * * * * *

THURSDAY, *March 4th*, 1869.

* * * * * * * * *

2½ O'CLOCK P. M.

* * * * * * * * *

Mr. Fuller, from the committee on railroads, to which was referred a bill (H. B. No. 231) for "An act to amend an act entitled 'An act to incorporate the Illinois Grand Trunk Railway,'" reported the same back amended and recommended its passage as amended.

The report of the committee was concurred in and the bill ordered to a third reading.

* * * * * * * * *

FRIDAY, *March 5th*, 1869.

* * * * * * * * *

House bill No. 231 for "An act to amend an act entitled an act to incorporate the Grand Trunk Railway," was read a third time, and the question being, "Shall this bill pass?"

It was decided in the affirmative. Yeas 25, nays 00.

Those voting in the affirmative are—

Addams	McNulta
Boyd	Munn
Casey	Nicholson
Chittenden	Patton
Crawford	Pinckney
Dore	Shepherd
Epler	Snapp
63 Flagg	Strevell

Fort	Tincher
Fuller	Turney
Harlan	Van Dorston
McManus	Ward
	Woodson

Ordered, that the title be as aforesaid, and that the secretary inform the house of representatives thereof, and ask their concurrence therein.

* * * * * * *

MONDAY, *March 8th*, 1869.

* * * * * * *

A message from the house of representatives, by Mr. Halsted:

Mr. SPEAKER: I am directed to inform the senate that the house of representatives has concurred with them in the passage of amendments of house bills of the following numbers, to wit:

* * * * * * *

231.

* * * * * * *

WEDNESDAY, *April 14th*, 1869.

* * * * * * *

A message from the governor, by E. B. Harlan, private secretary:

Mr. SPEAKER: I am directed by the governor to inform the senate that he has approved and signed bills of the following titles, viz:

* * * * * * *

H. B. No. 231.

64 An act to amend an act entitled an act to incorporate the Illinois Grand Trunk Railway.

* * * * * * *

Mr. Flagg, from the joint committee on enrolled and engrossed bills, begs leave to report that the bills of the following titles have been, on the 24th day of March, 1869, laid before the governor for his approval, viz:

* * * * * * *

H. B. 231.

An act to amend an act entitled "An act to incorporate the Illinois Grand Trunk Railway."

UNITED STATES OF AMERICA,
State of Illinois, ss:

OFFICE OF SECRETARY.

I, George H. Harlow, secretary of the State of Illinois, do hereby certify that the foregoing is a true and complete copy of all the proceeding had in the house of representatives and senate, of the 26th general assembly of the State of Illinois, in relation to house bill No. 231, a bill introduced under the title of "An act to amend an act entitled 'An act to

incorporate the Illinois Grand Trunk Railway,'" said copy being taken from the original journals, which are now on file in this office.

In witness whereof, I hereto set my hand and affix the great seal of State at the city of Springfield, this eleventh (11) day of December, A. D. 1877.

[SEAL.] GEO. H. HARLOW,
Secretary of State.

65 Which was all the evidence offered or received in said cause.

And afterwards, March 22d, 1878, said court rendered his special findings therein in favor of plaintiff, as elsewhere appear, which are hereby made part of the record. But counsel for defendant excepted in apt time to said finding of said court that said act in said declaration and bonds mentioned was duly passed in a constitutional manner by said general assembly of said State, and asked the court to find in favor of defendant on that subject, upon the evidence submitted, but the court declined to so find, and defendant's counsel then and there duly excepted.

Whereupon the court proceeded to render judgment upon said finding in favor of said plaintiff and against said defendant, as elsewhere appears, to which said ruling and decision of the court last named, and because said judgment was not in favor of the defendant as then and there asked for by her counsel, the counsel for the defendant did then and there duly except, and because the said several matters do not otherwise appear, said counsel for the defendant ask the court to sign and seal this bill of exceptions and make the same a part of the
66 record herein, which is done accordingly.

[SEAL.] H. W. BLODGETT.

The above bill of exceptions seems to be correct, and is satisfactory to all.

THOMAS S. McCLELLAND,
Attorney for J. H. Wade.

(Endorsed:) Filed March 22, 1878. Wm. H. Bradley, cl'k.

And afterwards, to wit, on the 23d day of April, A. D. 1878, said defendant, by its attorney, filed in said clerk's office its bond in said entitled cause, which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, the Town of Walnut, Bureau County, Illinois, as principal, and Orson L. Bearss, James Fuller, H. Long, F. E. Van Lieu, P. H. Martin, John Burke, George Eldrich, G. W. Clayton, John Whitber, Morris Switzer, Peter Pinion, C. McMeen, David Milliken, Lenox Pentland, E. Ross, R. M. Wymer, James Nation. S. M. Oakford, John Forney, Henry Guither, Isaac Kurtz, jr., H. B. Smith, Eugene E. Oakford, P. Lampher, Henry Norman, R. P.
67 Young, William Cronkwright, L. K. Thompson, E. Atkinson, J. R. Isdell, A. H. Price, James Van Arman, J. K. Ross, Isaac Kelley, as sureties, are held and firmly bound unto J. H. Wade, in the full sum of eleven thousand dollars ($11,000) lawful money of the United States, to be paid to the said J. H. Wade, or to his certain attorney, executors, administrators, or assigns, to which payment well and truly

to be made we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents. In witness whereof said Town of Walnut has caused these presents to be signed by her supervisor and town clerk, sealed with her private seal (there being no official seal), and dated this 25th day of March, A. D. 1878, and said sureties have affixed their respective hands and seals on the same day.

Whereas at a circuit court of the United States, held at Chicago, in and for the northern district of Illinois, on the twenty-second day of March, A. D. 1878, in a suit depending in said court between said J. H. Wade, plaintiff, and said Town of Walnut, defendant, a judgment was rendered against the said Town of Walnut and in favor of said J. H. Wade for the sum of seven thousand eight hundred and ninety-
68 five ($7,895) dollars, besides costs of suit, and said Town of Walnut having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said above-named defendant citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next.

Now the condition of the above obligation is such that if the said the Town of Walnut shall prosecute her writ of error to effect, and answer all damages and costs if she fail to make her appeal good, then this obligation to be void; else in full force and virtue.

THE TOWN OF WALNUT,
[SEAL.] By ORSON L. BEARSS,
Supervisor.

[SEAL.] FRANK E. VAN LIEN,
As Town Clerk.

Orson L. Bearss.	[Seal.]	Eugene E. Oakford.	[Seal.]
James Fuller.	[Seal.]	P. Lamper.	[Seal.]
F. E. Van Lieu.	[Seal.]	Henry Norman.	[Seal.]
P. H. Martin.	[Seal.]	Robert P. Young.	[Seal.]
George Eldridge.	[Seal.]	Wm. Cronkwright.	[Seal.]
G. W. Claton.	[Seal.]	L. K. Thompson.	[Seal.]
John Whitber.	[Seal.]	E. Atkinson.	[Seal.]
Morris Switzer.	[Seal.]	John N. Isdell.	[Seal.]
Peter Pinion.	[Seal.]	A. H. Price.	[Seal.]
C. McMeen.	[Seal.]	J. M. Van Arman.	[Seal.]
David Milliken.	[Seal.]	J. K. Ross.	[Seal.]
Lenox Pentland.	[Seal.]	Isaac Kelley.	[Seal.]
69 E. Ross.	[Seal.]		[Seal.]
R. M. Wymer.	[Seal.]	John Burke.	[Seal.]
James Matson.	[Seal.]	S. M. Oakford.	[Seal.]
John Forney.	[Seal.]	Henry Guither.	[Seal.]
Isaac Kurtz.	[Seal.]	H. B. Smith.	[Seal.]

Sealed and delivered in presence of—
ORSON L. BEARSS,
FRANK E. VAN LIEU.

Last signature above John Burke erased before signing.

STATE OF ILLINOIS,
Bureau County:

On this 19th day of April, A. D. 1878, before the undersigned, a no-

tary public in and for said county, personally appeared John Whitber, worth $30,000; J. M. Van Arman, worth $20,000; E. Ross, worth $30,000; P. H. Martin, worth $3,000; C. McMeen, worth $5,000; L. K. Thompson, worth $2,000, and J. K. Ross, worth $1,000, who, being duly severally sworn by me, each for himself stated that he is one of the signers of the within instrument, and is worth the sum set opposite his name in unencumbered real estate, in said county, over and above all liabilities and exclusive of legal exemptions.

Given under my hand and seal the day and year aforesaid.

[SEAL.] FRANK E. VAN LIEU,
Notary Public.

70 Approved.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed April 23, 1878. Wm. H. Bradley, clk.

71 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in the cause wherein J. H. Wade is the plaintiff, and the town of Walnut, in Bureau County, Illinois, is the defendant, as the same appears from the files and records of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 24th day of September, A. D. 1878, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

72 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between J. H. Wade, plaintiff, and The Town of Walnut, defendant, a manifest error hath happened, to the great damage of the said The Town of Walnut, as by her complaint appears, and it is being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1878, in the Supreme Court to be then and there held; that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this sixteenth day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the 102*th* year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Supreme Court of the United States. Town of Walnut, pl'ff in error, vs. J. H. Wade, def't in error. Writ of error. Copy deposited for def't in error, & original filed this 16th day of April, A. D. 1878. Wm. H. Bradley, clk.

73 UNITED STATES OF AMERICA,
Northern District of Illinois, ss.:

To J. H. Wade, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1878, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein The Town of Walnut is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment therein mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, this twenty-third day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

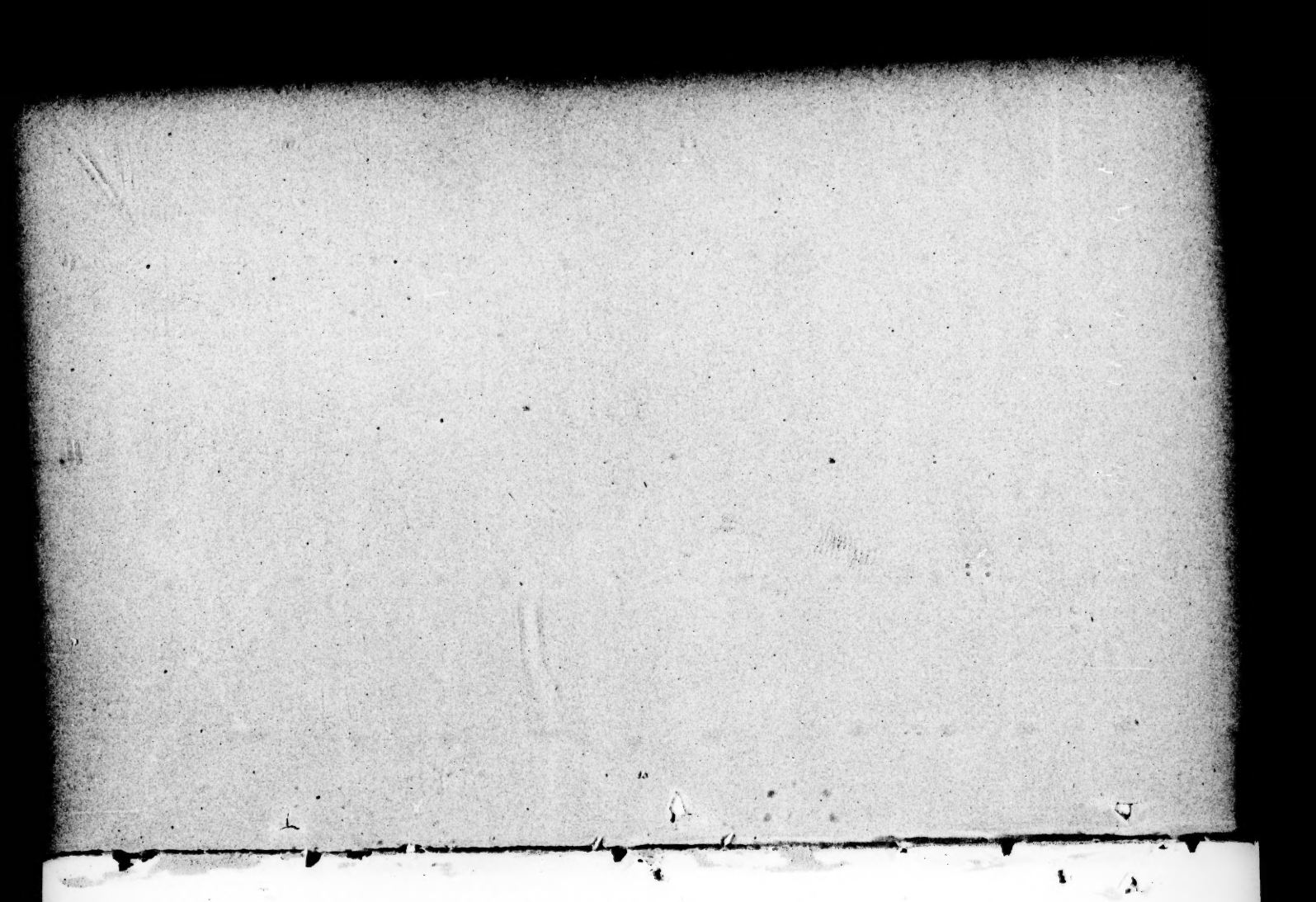
H. W. BLODGETT, *Judge.*

74 Service of a copy admitted this 23d April, A. D. 1878.

THOMAS S. McCLELLAND,
Att'y for J. H. Wade.

(Indorsed:) Supreme Court of the United States. Walnut vs. Wade. Citation to October term, A. D. 1878.

(Indorsement on cover:) No. 258. The Town of Walnut, plaintiff in error, vs. J. H. Wade. N. Illinois C. C. U. S. Filed 12th October, 1878.



IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

THE TOWN OF WALNUT,
Plaintiff in Error,

vs.

J. H. WADE,
Defendant in Error.

No. 258.
Error to the Circuit Court of the United States, Northern District of Illinois.

Points and Argument for Plaintiff in Error.

ALLAN C. STORY,
For Plaintiff in Error.

CHICAGO, ILL.:
S. I. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
1881.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

THE TOWN OF WALNUT,
Plaintiff in Error,
vs.
J. H. WADE,
Defendant in Error.

No. 258.
Error to the Circuit Court of the United States, Northern District of Illinois.

STATEMENT.

On the 11th day of January, 1869, a Bill marked H. B., No. 231, entitled "An act to amend an act entitled an act to incorporate the *Illinois* Grand Trunk Railway," was introduced in the House of Representatives, State of Illinois. After passing through the stages of legislation, it was passed February 6th, 1869, and it was ordered that the title be as aforesaid, and that the Clerk inform the Senate thereof. (Rec. 21, 22.)

No bill by that title was ever reported from the House to the Senate, but on the 8th of February 1869, a report was made from the Senate to the House that a Bill, H. B. No. 231, for an act to amend an act to incorporate the Grand Trunk Railway had been passed, and concurrence was asked. After passing through the several legislative stages on the 5th day of March, 1869, House Bill, No. 231, for an act to amend an act entitled an act to incorporate

The Grand Trunk Railway was read a third time, and the bill passed, *and it was ordered that the title be as aforesaid.* (Rec. 24, 25.)

On the 6th day of March, 1869, a message was delivered from the Senate to the House that certain House bills had been passed with amendments, and among them House Bill, No. 231, a bill for an act to amend an act entitled an act to incorporate the Grand Trunk Railway, in which amendments the concurrence of the House was asked, and on the same day said bill, thus described and entitled, was taken up, and the House concurred with the Senate in the amendments thereto, and it was ordered that the title be as aforesaid. (Rec. 23.)

On the 14th of April, 1869, message was delivered from the Governor that he had approved and signed bills, one which bore the following title, "House Bill, No. 231, for an Act to amend an act entitled and act to incorporate the Illinois Grand Trunk Railway." (Rec. 25.)

The Secretary of State certifies that he is unable to find any evidence of the passage in the Senate of an act under the title of "An Act to amend an act entitled 'an act to incorporate the *Illinois* Grand Trunk Railway.'" (Rec. 26."

There was published in Vol. 3, Private Laws of 1869, page 307 the following act:

An Act to amend an act entitled "An Act to incorporate The Illinois Grand Trunk Railway."

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, that any city, incorporated town, or township which may be situated on or near the route of the Illinois Grand Trunk Railway west of the city of Mendota, via. Prophetstown, to the Mississippi River, may become subscribers to the stock of

said railway, and may issue bonds for the amount of such stock so subscribed with coupons for interest thereto attached under such limitations and restrictions and on such conditions as they may choose, and the directors of said Company may approve the proposition for said subscription, having been first submitted to *the inhabitants* of such city, town or township, and *approved by them;* and upon application of any ten voters of any city, town or township, as aforesaid, specifying the amount to be subscribed, and the conditions of such subscription, it shall be the duty of the clerk of such city, town or township immediately to call an election, in the same manner that other elections for said city, town or township are called, for the purpose of determining whether said city, town, or township will subscribe to the stock of said railway; and if a majority of said votes shall be "for subscription," then the corporate authorities of said city, town, or township, and the supervisor and town clerk of said township so voting, shall cause said subscription to be made; and upon its acceptance by the directors of said Company shall cause bonds to be issued in conformity with said vote, which bonds shall not be of less denomination than one hundred dollars, and in no case bear a higher rate of interest than ten per cent., provided no such election shall be held until at least thirty days' previous notice thereof shall be given in the manner prescribed by law.

SECTION 2. It shall be the duty of the proper authorities of any city, town or township, issuing bonds as aforesaid, to make all necessary arrangements, and provide for the prompt payment of all interest and other liabilities accruing thereon, and to levy such taxes as may be necessary therefor as other taxes are levied by them.

SECTION 3. This act shall be liberally construed for

the purposes intended and expressed therein, and shall be held to be a public act, and shall be in force from and after its passage. (Rec. 16, 17.)

On the 25th day of June, 1870, seven days before the Constitution of 1870 was adopted, an election was held in the Town of Walnut, Bureau County, Illinois, at which it is claimed that "the corporate authorities, and the Supervisor, and Town Clerk," of said town, were authorized upon certain conditions shown (Rec. 19–20), to subscribe for and take 300 shares, of $100 each, of the capital stock of "The Illinois Grand Trunk Railway," to be accepted by the company within three years, to be paid for in bonds of said Township, due in 10 years from date of issue, with interest at 10 per cent. per annum, payable annually. On the 2d day of July, 1870, a vote was taken by the voters of the State of Illinois, which resulted in the adoption of the new Constitution, and of certain separate articles, one of which took effect *that day* and reads as follows:

"No County, State, Town, Township, or other municipality, shall ever become subscriber to the capital stock of any railway or private corporation, or make donation to, or loan its credit in aid of, such corporation; but, provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscription where the same has been authorized under existing laws by a vote of the people of such municipalities *prior* to such adoption."

This vote of $30,000 was never accepted by the company; but on August 6, 1870, the railroad corporation, by its directors, served a written notice upon the Supervisor and Town Clerk of said Town of Walnut as follows:

"To the Supervisor, Town Clerk, and legal voters of the Towns of Lamoille, Walnut, Prophetstown and Tampico, along the line of the Illinois Grand Trunk Railway:

"We, directors of said company, will accept forty thousand dollars from Lamoille, Walnut and Prophetstown, and twenty thousand dollars from the Town of Tampico, as township subscriptions in full satisfaction as the acts of said township to the said Ill. G. T. R. Co.

"Dated August 3rd, 1870.

"J. V. THOMPSON,
"L. C. ELLSWORTH,
"A. J. WATSON,
"Directors."

Which notice was, on the 6th day of August, 1870, received and recorded upon the records in the Town Clerk's office of said Town of Walnut. (Rec. 20.)

No vote was ever taken upon this proposition to subscribe $40,000 as requested by said railway directors, but on the 6th day of August, 1870, a second special election was called and held in said Town of Walnut, at which $10,000 were voted "in *addition* to the $30,000 already voted," the same to be paid for in bonds of said township, due ten years from date of issue, with interest at ten per cent. per annum, *principal and interest payable in New York*, upon certain conditions. (Shown Rec. 20.)

In October, 1870, three months after the separate article of the Constitution, prohibiting the making of subscriptions to railway companies took effect, and without the corporate authorities of the town, taking any action on the subject of such vote, the Supervisor and Town Clerk of Walnut alone executed 400 bonds, for the sum of $100 each numbered consecutively from 1 to 400 inclusive, amounting

in the aggregate to $40,000, said bonds bearing interest at the rate of ten per cent. per annum, payable annually, payable to the Illinois Grand Trunk Railway, or bearer, on the first day of January, 1881, and dated January 1, 1871, said principal and interest payable at "the office of the State Treasurer, at Springfield, Ill." (Rec. 14–18.)

On the trial, one of the said bonds, No. 300, was read in evidence and reads as follows:

Number 300. UNITED STATES OF AMERICA. 100 Dollars.
STATE OF ILLINOIS.
Walnut Township Railroad Bond.

"Know all men by these presents, That the Township of Walnut, in the County of Bureau, and State of Illinois, is indebted to the Illinois Grand Trunk Railway, or bearer, the sum of one hundred dollars, lawful money of the United States, which the said Township of Walnut promises to pay to the Illinois Grand Trunk Railway, or to the bearer hereof, on the first day of January, in the year one thousand eight hundred and eighty-one, at the office of the State Treasurer, in Springfield, Illinois, on the presentation of this bond, with interest thereon from the first day of January, A. D. 1871, at the rate of ten per centum per annum, payable annually at the office of the State Treasurer, Springfield, Illinois, on the first day of January in each year, *on the presentation and surrender of the annexed coupons* as they severally become due.

"This bond is issued under and by virtue of the Charter of said Illinois Grand Trunk Railway, and amendment thereto, and other Laws of the State of Illinois, all in accordance with the vote of the electors of said Township at the special election held June 25, A. D. 1870, in accordance with said charter and amendment and laws.

"In witness whereof, the said Township of Walnut has caused these presents to be signed by the Supervisor and Clerk of said Township, this first day of January, one thousand eight hundred and seventy-one.

WM. SANDERS,
Town Clerk.

M. KNIGHT,
Supervisor.

(Across the face :) $100.

(Endorsed :) The Illinois Grand Trunk Railway, by A. H. Castle, President. Auditor's office, Illinois, Springfield, April 15th, 1871.

On the trial 1,010 Town Orders mentioned in the declaration, were put in evidence, one No. 251 being copied in the record, reads as follows:

$10 WALNUT TOWNSHIP. No. 251.

Railroad Bond.

INTEREST WARRANT.

Supervisor of Walnut Township pay to bearer January 1st, 1875, ten dollars, at the office of State Treasurer, Springfield, Illinois.

W. SANDERS,
Town Clerk.

M. KNIGHT,
Supervisor.

(Across the face :) 4. (Rec. 17.)

Sometime in the month of January, 1871, the Supervisor and Town Clerk of said Town subscribed for $40,000 of the capital stock of said Illinois Grank Trunk Railway, and issued and delivered said 400 bonds to said Railway in payment of said subscription, and in ten or fifteen days thereafter the railroad corporation sold said bonds, and applied the proceeds to the construction of its

railroad through said town, and the plaintiff in September, 1871, bought the bonds, from which the interest orders sued on were detached. (Rec. 15.)

In the court below, March 22, 1878, this cause was heard before the Hon. Henry W. Blodgett, District Judge, sitting as Circuit Judge, a jury being waived, as per stipulation filed; said stipulation being that the judgment rendered should be binding upon the parties as if upon the verdict of a jury, subject to the right of either party to prepare a Bill of Exceptions and sue out a Writ of Error. The proceedings on the trial were preserved by a Bill of Exceptions (Rec. 16) and the Court made a special finding of facts. (Rec. 14–15.) After the evidence was submitted, the plaintiff took a non-suit as to all of the interest orders taken from the bonds mentioned in the declaration, numbered from 301 to 400 inclusive (316 in number) and, thereupon, the Court found for the plaintiff upon the other interest orders, (694 in number,) and assessed the damages at $7,895, including $935 interest, and rendered judgment therefor.

In the course of the trial the plaintiff first offered in evidence a copy of the Act of the Legislature entitled "An Act to amend an Act entitled 'An Act to Incorporate the Illinois Grand Trunk Railway Company,'" and also 1,010 interest orders, a copy of one of which has been given. When the interest orders were offered, objection was made in apt time. First, that the same were not signed by the corporate authorities of said town. Second, That they had not been presented to the proper officers or demand of payment made thereon. Third, They were detached from, and not annexed to, any bond, and the absence of said bond had not been accounted for; but the Court overruled all of said objections and received

the interest orders in evidence; to which exception was taken.

The plaintiff also read in evidence a bond No. 300, "as a true and exact copy" of all the bonds from which the interest orders sued on were detached, except as to the numbers, and the defendant objected for the reason that the bonds were not valid instruments, and not produced.

On the trial the deposition of the plaintiff, Wade, was read in evidence, in which he stated that there were 321 of said bonds of $100 each, dated January 1, 1871, drawing interest at 10 per cent. per annum, payable annually, the principal being due January 1, 1881, and that the bonds were numbered from 1 to 200 inclusive, 258 and 281 to 400 inclusive.

The counsel for the defendant objected, in apt time, to said testimony of the plaintiff, as to the number upon the bonds, their date, rate of interest, the amount and the time of payment, as secondary evidence, but the Court received the evidence, and exception was taken.

The defendant excepted, in apt time, to the finding of the Court that the Act of the Legislature was passed in a constitutional manner by the General Assembly of the State, and also excepted to the special findings of the Court, and to the rendering of judgment in favor of the plaintiff and against the defendant.

It also appeared in evidence, as shown by the bill of exceptions, that Nov. 12, 1872, the town of Walnut filed a bill in the Circuit Court of Bureau county, against the Auditor of State, the County Clerk, and County Treasurer of Bureau county, and the Collector of the Town of Walnut, and others, setting forth the several matters above stated, and alleging that the conditions mentioned in said several votes had never been complied with by said Illi-

nois Grand Trunk Railway, but that the bonds and coupons therein mentioned had been collusively and unlawfully issued to the company. An injunction was issued restraining the collection of any tax levied for interest on said bonds or extending any such tax, or paying over the same, etc., and on Aug. 24, 1874, the cause was tried and by decree of Court therein, said injunction was made perpetual. (Rec. 21.)

The Town of Walnut, the defendant, brings the case to this Court by writ of error.

ASSIGNMENT OF ERRORS.

1. The coupons sued on are *void* because there was no statute authorizing the issue of the bonds to which they were attached or even the execution thereof.

2. Even if the bill was properly passed and became a law, the conditions precedent therein provided were never complied with; no votes of the "inhabitants" having been had, nor any valid "acceptance" by the Railroad Company of the subscription.

3. There was no valid authority to make the subscription prior to July 2d, 1870, when the Constitution of Illinois took effect, which prohibited subscription and issuance of bonds for such purposes by corporations like plaintiff in error.

4. The so-called bonds and coupons were not signed by the "corporate authorities" as expressly directed in the Act of 1869, under which the authority is claimed.

5. The instruments sued on, and offered in evidence as "interest coupons," were neither contracts or agreements by the town to pay until after their acceptance by the drawee, and neither presentation nor acceptance was alleged or shown, by which any liability could be created, and it was error to admit them in evidence.

6. The Court erred in allowing interest upon the town orders, or so-called coupons, the same being issued by a municipal corporation, and there being no agreement therein to pay interest.

7. The Court erred in allowing defendants in error, over an objection, to testify as to the contents of the bonds claimed to be owned by him without producing the same and in receiving the town orders in evidence, disconnected from, and without producing the bonds.

8. The findings of the Court did not entitle defendant in error to judgment, and it was error to enter judgment thereon, over an objection, and refuse to enter judgment for plaintiff in error, as requested.

9. The Court erred in finding that the Act of March 25, 1869, was passed in a constitutional manner by the General Assembly of Illinois, upon the uncontradicted evidence submitted.

11. The Court erred in receiving Bond No. 300 "as a copy of all the others" over our specific objection, no others being produced, or evidence offered of the town orders having ever been attached thereto or cut therefrom.

POINTS.

The case thus presented involves the following questions:

1. Whether the so-called act was passed in the manner prescribed by Art. III, §§ 21, 23 of Illinois Constitution of 1848, and became a law. The legislative journals of each house were put in evidence and appear in the bill of exceptions, (Rec. 21 to 31,) from which it appears undisputed that no act to amend the charter of the "*Illinois* Grand Trunk Railway" ever passed the Senate of 1869.

R. S. Ill., 1874, p. 39.
Binz v. *Weber*, 81 Ill. 288.
Johnson v. *People*, 83 Ill. 435.
Ryan v. *Lynch*, 68 Ill. 163.
Miller v. *Goodwin*, 70 Ill. 659.
Town of Ottawa v. *Perkins*, 94 U. S., 261.

2. Said alleged act is in conflict with Article IX, § 5, and Article VI, Constitution of Illinois of 1848.

Ill. R. S. 1874, pp. 39, 51, 53.
People ex rel. v. *Society Prot. Deaconesses*, 71 Ill. 229.
Sedgwick on Stat. and Const. Law, p. 30, 338–9
People v. *Wright*, 70 Ill. 388.
Cooley on Const. Lim., §§ 81, 83. 149.
People v. *Lawrence*, 36 Barb. N. Y., 186.
O'Leary v. *Cook County*, 24 Ill. 537.
Erlinger v. *Boneau*, 57 Ill. 94.
Mills v. *Co. St. Clair*, 2 Gilm. Rep. 198.
St. Clair Turnpike Co., v *People*, 82 Ill. 174.
Protho v. *Orr*, 12 Geo. 36.
I. C. R. R. Co., v. *Potts*. 7 Ind. 683.
People v. *Mellen*, 32 Ill. 181.
Mewhiter v. *Price*, 11 Ind. 199
People v. *Thome*, 35 Ill. 121.
State v. *Miller*, 45 Mo. 495.
Weaver v. *Lapsey*, 43 Ala. 22.
Priv. Laws. Ill. 1869, title "Railroads."
Mills v. *McCabe*, 44 Ill. 194.
Supervisors Tazewell v. *Davenport*, 40 Ill. 197.

3. The bonds and interest warrants were unauthorized. The act in question, in terms, provides "the proposition for said subscription, having been *first submitted* to the *inhabitants* of such city, town, or township, and approved by them," and it appears from the bill of exceptions, finding of the Court, and recitals in the bonds, that no at-

tempt was ever made to submit such proposition to the "*inhabitants*" *of the Town of Walnut.*

Cooley's Const'l Lim., Sec. 65.
Thomas v. *Owens*, 4 Md. 189.
Matter of Dorsey, 7 Porter, 293.
Rison v. *Farr*, 24 Ark. Rep. 161.
St. Josephs R. R. v. *Buchanan Co. Court*, 39 Mo. 485.
The State v. *Williams*, 5 Wis. Rep. 308.
Monroe v. *Collins*, 17 Ohio, N. S. 665.
The State v. *Simonds*, 57 Maine, 148.
The State v. *Staten*, 6 Cold. 243.
Davis v. *McKeeley*, 5 Nev. Rep. 369.
McCafferty v. *Guyer*, 57 Penn. St. 109.

4. It appears from the bill of exceptions and finding of the judge, that the so called bonds and interest orders were in fact based upon an alleged election held Aug. 6, 1870, by the voters of said town, and were therefore clearly prohibited by Section 2, Art. XIV, Illinois Constition, in force July 2d, 1870.

5. It appears by the bill of exceptions, that the alleged act of March 25, 1869, in terms only authorized an issuance of bonds by the town "upon *the acceptance by the directors of said company*" of the subscriptions to the capital stock thereof, as voted, etc. The bill of exceptions and finding of the Court show that no subscription was in fact made, or acceptance had until January A. D. 1871, when by Section 4, of Art. XIV, Constitution of July 2, 1870, the same was prohibited.

People v. *Tazewell Co.*, 22 Ill, 154–56.
Dillon on Munic. Corp., 88, § 42.
Aspinwall v. *Com'rs Davis Co.*, 22 How. 362.
Wadsworth v. *Supervisors Eu Claire*, Oct. T. 1880, S. C. U. S., 13 Chicago Leg. News, 160.

Allen v. *City Louisiana*, Oct. T. 1880, S. C. U. S., 13 Chicago Legal News, 185.

6. It appears from the bill of exceptions that though an election authorizing subscription of $30,000 was held June 25, 1870, by the electors, yet the directors of the railway company, by written notice, Aug. 6, 1870, *refused to accept the same*, and on that day another election was held, authorizing "$10,000 additional to said $30,000;" that $40,000 of the town bonds were made in October, 1870, while the subscription to, and acceptance by, the company did not take place until January, 1871, when the bonds were issued and delivered. Such action was prohibited by Art. XIV, § 4, Const'n, July 2, 1870.

Schall v. *Bowman*, 62 Ill. 324–5.

Aspinwall v. *Commissioners*, 22 How. 378.

Wadsworth v. *Supervisors* S. C. U. S., Oct. Term, 1880, 13 Chicago Legal News, 160.

7. It appears from the bill of exceptions, the finding of the judge, as well as the interest orders sued on, that the bonds and interest orders were signed by the supervisor and town clerk only; whereas the said act of March 25, 1869, in terms, required the bonds to be issued and signed by "*the corporate authorities and the supervisor and town clerk* of such town," and our objection to receiving them in evidence should have been sustained. (Rec. 17.)

8. The town orders sued on as interest warrants, "not being absolute promises to pay on their face, showing no authority to the town to issue them, are not commercial paper and could not separate from the bond, and without endorsement form a claim in favor of plaintiff against the town, and should not have been received in evidence over objection for that ground as shown in the bill of exceptions. (Rec. 17.)

1 Dillon Munic. Corp. § 406 and note.
Gross Stat. Ill. 1869, ch, 73, § 3, 4.
Dana v. *San Francisco*, 19 Cal. 490.
People v. *Supervisors*, 11 Cal. 170.
1 Daniels Neg. Insts. § 427, and cases cited.
Dyer v. *Covington*, 19 Penn. St. 200.
Allison v. *Juniata Co.*, 50 Penn. St. 351.

9. The orders sued on as interest warrants, there being no evidence of their having been presented to the drawee at place of payment named therein, were improperly admitted in evidence at the trial over our objection as shown by bill of exceptions. (Rec. p. 17.)

1 Daniel on Neg. Insts., § 430.
Arents v. *Commonwealth*, 18 Gratt. Va. 761, 773.
Cruger v. *Armstrong, et al.* 3 Johns Cas. 5.
Tassel & Lee v. *Lewis*, 1 Lord Raymond 743.
1 Parsons Notes and Bills, p. 261.
Whitaker v. *Hartford R. R.* 8 R. I. 47.
State ex rel. v. *Pacific*, 61 Mo. 159.
Pease v. *Cornish*, 19 Maine, 193.
Dalrymple v. *Whitingham*, 26 Vt. 346.

10. By making the town orders payable at State Treasury, Springfield, instead of the treasury of the town as shown in the declaration, the officers exceeded their authority, and said instruments are therefore void.

People ex rel. v. *Peoria & O. R. R.*, 22 Ill. 153.

11. The town orders sued on, being detached, could not be received in evidence separate from the bond to which they belonged; our objection to their being received in evidence without producing the bonds should have been sustained. Bill of exceptions. (Rec. 17.)

Chap. 3, § 3, 4, Gross Ill. 1869, cases cited, *supra.*
Crosby v. *N. L. & N. R. R.*, 26, Conn. Rep. 121.
Rose v. *Bridgeport*, 17 Conn. Rep. 243.

12. The Bill of Exceptions shows that the testimony of defendant in error, was received, over objection specifically made as to the existence of 321 of the bonds of said town, their date, time of payment, amount, and rate of interest, as well as his ownership thereof and the identity of the town orders sued on, with each alleged bond and their former attachment to it. This was error. (Rec. 19.)

1 Greenleaf Ev., § 557 *et seq.*

Rawson v. *Curtis*, 19 Ill. 456.

13. The court admitted over objection, bond No. 300, "as a copy of the bonds claimed to be owned by defendant in error, without any evidence, or the production of such bonds or excuse for their non-production." Bill of Exceptions. (Rec. 18–19.)

1 Greenleaf Ev., § 557, and cases cited, *supra.*

14. The Court erred in holding that the town orders sued on drew interest from maturity, and in allowing $935 interest thereon in the judgment under review, they being issued by a municipal corporation.

Madison Co. v. *Bartlett*, 1 Scam. 67

The People v. *Bartlett*, 1 Scam. 67

Pekin v. *Reynolds*, 31 Ill. 529.

Chicago v. *People*, 56 Ill. 327, 334.

Pike County v. *Hosford*, 11 Ill. 170.

Chicago v. *Allcock*, 86 Ill. 384.

People v. *Tazewell Co.*, 22 Ill. 147.

Johnson v. *Stark Co.*, 24 Ill. 75.

Robbins v. *Co. Court*, 3 Mo. 57.

State ex rel. Jeffries v. *Town of Pacific*, 61 Mo. 155.

Skinner Platt Co. 22 Mo. 437.

2 Daniels on Neg. Insts., § 1514.

Cases cited Points 8 and 9.

ARGUMENT.

One of the leading questions in this case is whether the Town of Walnut had authority to make the subscription and issue the bonds and interest warrants in question. The Act of 25 March, 1869, is invalid, as we contend, for three reasons:

a. Its existence as an Act of the General Assembly depends upon whether it was passed in a constitutional manner.

Sec. 21, Art. III. Illinois Constitution of April 1, 1848, reads thus:

"Bills may originate in either house, but may be altered, amended, or rejected by the other; and on the final passage of all bills the vote shall be by ayes and noes and shall be entered on the journal, and no bill shall become a law without the concurrence of a majority of all the member elect in each house."

R. S. Ill. 1874, p. 39.; R. S. 1877, p. 39.

Sec. 23 reads thus:

"Every bill shall be read on three different days in each house * * and every bill having *passed both houses* shall be signed by the speakers of their respective houses; and no private or *local law*, which may be passed by the General Assembly shall embrace *more than one subject*, and that shall be expressed *in the title*. *Id.*

In *Binz* v. *Weber*, 81 Illinois, 288, the Supreme Court say: "A controlling consideration in adopting these constitutional provisions was to guard against inconsiderate legislation. The practice of passing bills by their titles, without being read at large in the two houses had grown into a common practice. Bills were passed by their titles and members supposing their titles truly stated the pro-

visions of the bills, voted for them without learning their provisions. In this manner vicious legislation obtained. It was to prevent this practice in part at least that this constitutional provision (Sec. 23) was adopted.

In the same case, the same Court, WALKER, J., say: "By giving effect to this provision, no portion of a bill, *not germane to its general object*, or *not expressed in the title when passed* through *the two houses*, could acquire the force of a law. *Only the portions of a bill expressed in the title when passed are constitutionally adopted.* The title adopted after the passage of the bill, is *no part of the law*, nor does it enlarge, limit, or control the law. The title to a bill is an essential part of the bill, and under the Constitution every bill *must* have a title, and such title must *truly state* the object of the bill. Under this constitutional requirement, (§ 23) we must look to the title of this *bill as it passed each house*, and not to the title of the act after its adoption, to learn what portions of its provisions are constitutional. By *thus* applying these provisions to the passage of laws, we have no doubt we shall effectuate the intention of the framers of that instrument." In *Larrison* v. *Peoria, etc. R. R.* 77 Ill. 11, "it was said that a title to a bill was not essential, but on further argument and reflection, we are satisfied that we were wrong, as the *Constitution has made it indispensible*," and that opinion in that respect must be modified.

The same doctrine has since been affirmed, and approved as applicable to the Constitution of 1870, by which it is made to apply to all public laws. *Johnson* v. *The People*, 83 Ill. 435.

The Journals of the Senate and House of Representatives of Illinois, for the 26th General Assembly, which it is claimed passed the act in question, were offered in

evidence by both parties, duly certified, and preserved in the bill of exceptions. (Rec. 21, 26.)

The *Senate* proceedings appear, *ante* p. 1, and show that as reported to the Senate from the House, read a first, second and third times in the Senate, and *as it passed the Senate*, the bill was "An Act to amend an act, entitled an act, to incorporate *The Grand Trunk Railway;* also, "ordered that *the title be as aforesaid*," etc. (Rec. 24-25), and the bill was reported back to the house *by that title* as shown by the *House* Journal. (Rec. 23 Top of page.)

These Journals were kept separately by separate officers, and that there might be no question about the matter, the Secretary of State, in whose custody they are kept by law, certifies, "And I further certify that I am unable to find *any evidence of the passage in said Senate of* an act under the title of "An Act to amend an act, entitled 'An Act to incorporate the Illinois Grand Trunk Railway.'" (Rec. 26.) Such a certificate is made by Statute competent evidence. *Ryan* v. *Lynch*, 68 Ill. 163.

It is therefore conclusively established from the evidence, in which there is no conflict, that instead of the act as printed in the Statute book ever having been passed in the manner required by the Constitution, one bill, by one title, passed the House; and another bill, by another title, passed the Senate. We have no means of ascertaining what each bill contained, as they are not shown in the Journals.

By some legislative *legerdemain*, the Speaker of each House was induced to certify to the passage of these bills by the title given in the House. And when the similarity between these bills, and the difficulties in the way of detecting, or preventing such a deception, are considered the necessity for adhering strictly to the wholesome safe-

guards provided in the Constitution for the protection of the people, becomes imperative.

By what process of legal chemistry can two such incompatible ingredients be blended, and "An Act to amend the Charter of the Grand Trunk Railway," for which senators cast their votes in the Senate, and by which title alone it passed, be united with an "Act to amend the Charter of the "Illinois Grand Trunk Railway," by which title alone the bill was voted for and passed the House, especially when the great fundamental law forbids it?"

This case, therefore, is like *Ryan* v. *Lynch*, *supra*, and *Miller* v. *Goodwin* 70 Ill. 659, in each of which the Supreme Court of Illinois held an act *void*, because the journals failed to show it ever passed the Senate as required by the Constitution. These cases were recognized and approved by this Court in *Town of South Ottawa* v. *Perkins*, 94 U. S., 4 Otto, 261, Mr. JUSTICE BRADLEY speaking for the majority of the Court in an exhaustive opinion collating and reviewing all the Illinois authorities on the subject.

The bill under consideration being subject to the same infirmity must share the same fate. In the language of this Court, in *Town of South Ottawa* v. *Perkins:* "When once it became the settled construction of the Constitution of Illinois that no act can be deemed a valid law, *unless by the Journals* of the legislature *it appears* to have been *passed by both houses*, it became the duty of the courts to take judicial notice of the journal entries in that regard." On general principles the question as to the existence of a law is a judicial one, and must be so regarded by the Courts of the United States, (94 U. S., 4 Otto, 268.)

b. But the act does not express *its subject in its title*,

and is therefore void under sec. 23, art. 3, *supra*. The language is "no private or local law shall embrace but one subject, and that shall be expressed in the title." "Private or special statutes relate to certain individuals or particular classes of men," (Sedgwick on Statutory and Const. Law, p. 30,) or as the Supreme Court of Illinois define it, "a local or special statute is limited in the objects to which it applies," (*People* v. *Wright*, 70 Ill. 388.) Such a provision in a constitution is mandatory. (Cooley, Const. Limitations, §§ 81, 83, 149.)

People v. *Lawrence*, 36 Barb., N. Y. 186.
Protho v. *Orr*, 12 Geo. 36.
I. C. R. R. v. *Potts*, 7 Ind. 683.
People v. *Thome*, 35 Ill. 121.
State v. *Miller*, 45 Mo. 495.
Weaver v. *Lapsey*, 43 Ala. 22.
Cutlip v. *Sheriff*, 3 W. Va. 588.
Tuscaloosa Bridge Co., 41 Ala. 9.
Stuart v. *Kinsella*, 14 Minn. 524.

The *real subject* of the act, judging from the language used, was to authorize certain towns to subscribe for stock in aid of a railroad, issue bonds therefor, fix the amount and rate of interest, and authorize the levy of a tax to pay the same. The "Illinois Grand Trunk Railway" is named *once* therein (third line of first section), but merely to indicate geographically the towns to be authorized, while the act named in the title, which it falsely pretends to amend, is neither referred to directly or indirectly in the act. Neither is any authority thus conferred on the railroad company which it did not possess without it.

"Amend means to correct, to supply a defect, to improve or make better by some addition of what is wanted,

as well as by expunging what is wrong, as to amend a bill before the legislature."—Webster.

This Company was chartered in 1867, 2 Priv. Laws Ill. 1867, p. 595. It therefore possessed the right to "approve," or "accept" or reject subscriptions to its capital stock, no matter by whom made, and the act under consideration does not even purport to confer any additional power or authority whatsoever upon the company. Wherein, then, does this act in the least degree "amend" the act to incorporate the Illinois Grand Trunk Railway? The title no more "expresses the subject" of the act than the title of this suit indicates the questions which form the subject of litigation therein. The play is "Hamlet" in the title, but it is wholly omitted on the stage. This general assembly of 1869 granted forty-eight new railroad charters, gave "new privileges" to sixty others, and "authorized subscriptions" in aid of twenty more. (2 Priv. Laws, Ill., 1869, Index title "Railroads.")

There is therefore no such dearth of special charters, as to induce presumptions in favor of this bill, beyond what is shown by the journals, in order to give it vitality, even if it was proper to do so.

Under the Constitutional test requiring it to have the same title in passing each house, the bill failed to become a law. *Binz* v. *Weber*, 81 Ill., *supra*.

Nor is it any answer to this argument that the two bills purport to have the same number. There is no law requiring a number, or authorizing it. The fundamental law requires *a title*, as the bill passes the two houses. No device or expedient can supply its omission.

In *The People ex rel* v. *Institution of Protestant Deaconess'*, 71 Ill. 229, the Supreme Court of Illinois, in testing a special act by this section 23, uses the following language:

"The purpose of the constitutional provision, was that such a private or local act should not only embrace but one subject, but that the title of the act should afford *some information* of the *subject* of it. The information which would *naturally* be *conveyed* by the title of this act would be that the subject was one local to Chicago. There might have been a willingness so far as respected Chicago to grant * exemption from taxation, etc., * when the idea would not have been entertained for a moment to extend such exemption and privileges into all the 102 counties in the State in which the corporation might choose to establish a charitable institution, as in the construction contended for by appellee. If appellee's construction be the true one, then the title as indicative of the subject of the act would have been deceptive, and as we would view it would be *in fraud* of the constitutional provision." Id. 233.

O'Leary v. *County of Cook*, 24 Ill. 537.
Erlinger v. *Boneau*, 57 Ill. 94.

So in this case the title was intended to deceive and undoubtedly had that effect.

The rule in relation to acts of this character is that being grants from the State, Courts will construe them strictly.

Mills v. *County St. Clair*, 2 Gilm. 198.
Case cited above, 71 Ill. 233.
St. Clair Co., Turnpike Co. v. *The People*, 82 Ill. 174.

Whatever is not unequivocably granted is withheld. Sedgwick Stat. and Cons. L. 338–9.

The rule in this class of cases is thus laid down by Cooley:

"If by striking from the act all that relates to the ob-

ject not indicated in the title, *that which is left is* complete in itself, sensible, capable of being executed, and wholly independent of that which is rejected, it must be sustained as constitutional. The principal questions therefore will be * whether the other objects in the act are so intimately connected with the one indicated in the title, that the portion of the act relating to them cannot be rejected and leave a complete and sensible enactment capable of being executed.

Cooley Constl. Lim. * p. 149.
People ex rel. v. *Institution, supra*, 71 Ill. 233.
Mewherter v. *Price*, 11 Ind. 199.

But if this cannot be done the whole is *void.*

The People v. *Mellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.

We have seen that the only thing authorized by this act was the subscription of certain towns to rail road stock, the issuance of bonds and taxation to pay the same; we have also seen that this company had a right to accept without this act, and that no rights were really conferred by the act upon the company. It is manifest therefore that the authority to these towns to vote, to subscribe, issue bonds and levy taxes, not being germane to the pretended subject of the bill, are *void*, and thus emasculated, nothing is left of the bill for the title to act upon, hence the whole is void.

c. But assuming for purposes of argument, that the infirmities just shown can be cured in some miraculous manner, there is still another equally fatal.

Art. IX. § 5, Illinois Constitution 1848, provides: "The corporate authorities of counties, townships, school districts, cities, towns and villages, may be vested with power to assess and collect taxes for corporate purposes, such

taxes to be uniform in respect of persons and property within the jurisdiction of the body imposing." * *

Sec. 1 of the Act under consideration authorizes "any * town * to become subscriber to the stock * and issue bonds therefor * the proposition for said subscription having been first submitted to *the inhabitants* of such * town * and approved *by them*." (Rec. 16.)

Art. VI. § 1, Constitution 1848, provides: "In all elections every white male 'citizen' above the age of 21 years, having resided in the State one year next preceding any election, shall be entitled to vote at such election, and every white male 'inhabitant' of the age aforesaid who may be a resident of the State at the time of the adoption of this Constitution (M'ch 6, 1848) shall have the right of voting as aforesaid, but no such 'citizen' or 'inhabitant' shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election." R. S. Ills. 1874, p. 51–53.

The word "inhabitant" is used with a different signification from the word "citizen," or "elector," not only in the Constitution of 1848, but in that of 1818. See Const. 1818, Art. II, §§ 5, 27, 29, 31; Art. V, Art. VII, Art. IX, § 8; schedule § 12, R. S. 1874, p. 32–40; Const. 1848, Art. III, § 3, 4, 6, 8; Art. VI, § 1; Art. VII, §§ 2, 4, 7; Art. VIII, § 1; Art. IX, § 1; Art XI, § 1.

Citizens and electors are synonymous, and are either native or naturalized. *Mills* v. *McCabe*, 44 Ill. 194.

"Inhabitants" are synonymous with residents, but are different from "electors." *Supervisors Tazewell* v. *Davenport*, 40 Ill. 197.

Of upwards of fifty acts of the General Assembly of 1869, contained in the same volume with the one under consideration, by which municipal corporations were permit-

ted to subscribe in aid of rail roads, all except this expressly require the question to be submitted to the "qualified electors," or "legal voters," two (p. 75 and 208,) to the "legal voters *and tax payers.*" While this is the only *act* which *in terms* directs that all "inhabitants," including, of course, women and *resident aliens*, shall be permitted to create a debt upon the taxable property of the town. This was clearly in conflict with the Constitutional provisions quoted, and conferred no rights whatsoever.

Cooley's Const'l Limitation, § 65.
Thomas v. *Owens*, 4 Md. 189.
Matter of Dorsey, 7 Porter, 293.
Rison v. *Farr*, 24 Ark. Rep. 161.
St. Joseph R. R. v. *Buchanan Co. Court*, 39 Mo. 485.
The State v. *Williams*, 5 Wis. 308.
Monroe v. *Collins*, 17 Ohio, N. S. 665.
The State v. *Symonds*, 57 Maine, 148.
The State v. *Staten*, 6 Cald. 243.
Davis v. *McKeeley*, 5 Nev. 369.
McCafferty v. *Guyer*, 57 Penn. St. 109.

II.

Nor would a power, in terms granted to the "inhabitants" of a locality be any authority to, or binding upon the "legal voters" of such locality.

Municipal officers cannot rightfully dispense with any of the essential forms of proceedings prescribed by the Legislature for their action in the matter of a subscription. *McClure* v. *Township of Oxford*, 92 U. S. 432.

And of these, all must take notice at their peril.

Pendelton v. *Amy*, 13 Wall. 297.
Kennicott v. *Supervisors*, 16 Id. 452.

St. Joseph Township v. *Rogers*, 16 Id. 644.
Town of Coloma v. *Eaves*, 92 U. S. 484.
South Ottawa v. *Perkins*, 94 U. S. 262.
Dillon on Munic. Corp. 88 § 42.
Miller v. *Goodwin*, 70 Ill. 663.
Wadsworth v. *Supervisors Eu Clare, supra.*
Allen v. *City of Louisiana, supra.*

"A power to create a debt by a municipality must be conferred by grant of the law-making power, and when made, and the power conferred, it must be strictly pursued.

If a particular mode of subscription is prescribed, the municipality cannot adopt a different mode, and if the power is conferred on one set of officials or individuals, *it cannot act* through or by a different set of officers or persons. The municipality can have no discretion nor can they adopt a mode they deem better adapted to accomplish the end. * The power then having been conferred on the County Court, it could alone act in carrying out the power. No *other* functionary body, or individual, could act simply for want of power." *Gaddis* v. *Richland Co.*, 92 Ill. 123, 4.

The Legislature has no power to grant the right of corporate or local taxation to any other persons than the corporate authorities of the municipality to be taxed.

Marshal v. *Silliman*, 61 Ill. 218.
Harwood v. *St. Clair Drainage Co.*, 53 Ill. 130.
Hessler v. *Drainage Co.*, 53 Ill. 105.
Livingston v. *Wider*, 53 Ill. 302.
People ex rel. v. *Mayor of Chicago*, 51 Ill. 17.
Cited with approval and followed in *Town of Englewood* v. *Marcy*, 92, U. S. 289.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Wiley v. *Silliman*, 62 Ill. 170.

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Barnes v. *Town of Lacon*, 84 Ill. 461.
Wiley v. *Silliman*, 62 Ill. 170.

The foregoing cases, except that in 84th, were quoted with approval and recognized by this Court, thro ugh Mr. Justice DAVIS in *Township of Elmwood* v. *Marcy*, 92 U. S. 292, who, after quoting the language used in *Livingston* v. *Wider*, *supra*, remarks: "The main doctrines of these cases were not new, but had been settled by the repeated adjudications of the Supreme Court, and that learned tribunal has given no decision at variance with them (p. 293) * We have always followed the highest Court of the State in its construction of its own constitution and laws. * There has been no conflict of judicial opinion in Illinois on the controlling question in this suit, but on the contrary, settled uniformly. As these concurring decisions of the court of last resort in that State are grounded on the construction of its statutes it is the duty of this court to conform to them. (294–295.)

We further held, that by corporate authorities, as used in this clause of the Constitution must be understood those municipal officers who are either directly elected by the people or appointed in some mode to which they have given assent."

Commissioner v. *Bolles*, 94 U. S. 104.
Commissioners v. *Jaundry*, Id. 202.
Commissioners of Park, Id. 278.
County of Warren v. *Marcy*, 97 U. S. 96.

III.

The bonds were not "issued by the corporate authorities and the Supervisor and Town Clerk of the Town of Walnut," but by the two last named officers alone.

In *Marshal* v. *Silliman*, commenced in May, 1869. The Supreme Court of Illinois, LAWRENCE, J., say: "The Town Supervisor and Town Clerk who issued these

bonds do *not represent a township* as the Board of Trustees represent an incorporated town, or the Common Council a city. The Supervisor and Town Clerk are *but a part of the corporate authorities.* They have no power of taxation, nor power of *themselves,* to bind the town in any way.

In *Livingston* v. *Wider*, 53 Ill. 304, we said that the Police Commissioners were not the corporate authorities of East St. Louis, * and therefore the Legislature could *not give them* the power of taxation by creating a debt binding the city. So of the Supervisor and Clerk. Though elected by the people, *they were not elected for the purpose of creating a debt or imposing a tax,* and the Legislature could not clothe these two officers without the consent of the people with a discretionary power of creating a debt, *because they are not of themselves the corporate authorities* in the sense of the Constitution." 61 Ill. 226.

In *Livingston* v. *Wider*, 53 Ill., 304, the same Court, LAWRENCE, J., say: "We held in *People ex rel. McCagg* v. *Mayor of Chicago*, 51 Ill. 17, same, *ex rel. Wilson* v. *Solomon*, Ib. 37, same, *ex rel. South Park Commissioners* v. *Com. Council of Chicago*, Ib. 85, and *Harward* v. *St. Clair Drainage Co.*, Ib. 130, * that this section, Art. IX, § 5, was to be construed as a limitation upon the power of the Legislature to grant the right of corporate or local taxation to any other persons than the corporate or local authorities."

It is the established ruling of this court that municipal corporations may always show and insist that the precedent statutory conditions presented by the act of authorisation have not been complied with, except when the regular constituted authorities of the town have decided that such conditions have been performed, and such decision appears in the recitals of the bonds.

Town of Coloma v. *Eaves*, 92 U. S. 484.
Town of Vienna v. *Mendock*, Id. 494.
Marcy v. *Township of Oswego*, Id. 637.
Humboldt Township v. *Long et al*, Id. 642.

The language used in this Act, is different from that of any case yet reported.—"The corporate authorities and the Supervisor and Town Clerk, and in ascertaining its meaning, we must give effect, if possible, to every part.

If we look to the township law we find:

"The *Supervisor, Town Clerk, and Justices of the Peace* of a town (or in the absence of either, the assessor, or collector, or both,) *constitute the Board of Auditors* to examine and audit all claims against their respective towns. Said Board, *or a majority of them*, shall make a certificate, *signed by a majority of the Board*," etc.

Gross' Stat. 1869, Chap. 103, Art. X., § 1, *et seq.*

The Justices of the Peace, Supervisor and Town Clerk, are a Board appointed to decide when vacancies exist, and to fill vacancies in certain offices.

Gross' Stat. 1869, Chap. 103, Art. VII., § 123.

Also to accept resignations. Id. § 4.

The Supervisor, Assessor and Town Clerk are made a Board of Health, with certain defined powers. Id. Art. X., § 1.

It is manifest, therefore, that the duties of managing the business of a town are not vested in any one set of officers, as "corporate authorities" like a city, but the policy of the law has been to reserve control in the peopeople; legislative department—the voters of the municipality at their annual town meeting.

Recurring again to the Township Law we find: "The annual town meeting is to be held on the first Tuesday in

April, in each year, after ten days notice." Art. IV., Sec. 1.

"The place of holding same shall be fixed by the voters at their annual town meeting." Id.

"The electors of each town shall have power at their annual town meeting, * to direct such sum to be raised in such town for prosecuting * suits or for any other purpose, as they may deem necessary." * Id. Art. IV., Sec. 4.

To take measures and give directions for the exercise of their corporate powers." Id. § 5.

The conclusion, therefore, is irresistible that by the term corporate authorities, as used in this Act, either these town boards were intended, or that the voters themselves—the legislative body of the town—should decide whether the vote of the inhabitants had been for subscription, and direct it to be made and the bonds issued. The reference to the Supervisor and Town Clerk would seem to indicate that the latter course was intended, that *two votes* were necessary to carry out the provisions of the Act, one by the inhabitants and one by the corporate authorities;" for, to use the language of the Act, "'If a majority of said votes shall be for subscription then the 'corporate authorities' and the Supervisor and Town Clerk * shall cause said subscription to be made."

How cause it to be made? Manifestly by the voters selecting certain persons, at the annual or some special town meeting called under § 1 to unite with the other town officers, or act separately in issuing the bonds.

We have seen that by the Constitution the corporate authorities *i. e.* legal voters are vested with power to create a debt or levy a tax. The Legislature say in effect, the 'inhabitants,' and 'corporate authorities,' this last was

inserted to save its constitutionality, and both are in terms to pass on the question. The Legislature did not specify how the latter should pass on the question, because it was already provided by general Statute.

The case is like *Allen* v. *City of Louisiana*, *supra*, where this Court, through Chief Justice WAITE, say: "In the construction of a statute, every word is, if possible, to be given some effect. It is not to be presumed that the Legislature intends any part to be without meaning. In the light of these maxims of interpretation, the substantial object of this section, evidently, was to *limit the power* to subscribe to the stock of said railroad companies * more than had been done by the Constitution. Under the Constitution, a two-third vote of the qualified voters, taken under the authority of law, would be enough; but under the charter, the two-thirds vote of the qualified voters required by the Constitution, and a *majority vote of the tax payers* were both necessary." 13 Chicago Legal News, 185.

In *ex parte*, Salisbury, 16 Ill. 350, the Supreme Court of Illinois, in order to uphold a Statute, construed it as if the constitutional provision had been in terms incorporated into it.

See also In. Re., Smith, 16 Ill. 347.

If, therefore, this act is constitutional, two elections were necessary, and it is conceded there was only one.

In either case the bonds are *void*.

IV.

The subscription was not accepted, nor bonds issued, until after the Constitution took effect.

In *Town of East Oakland* v. *Skinner*, this Court, quoting the provision of the Constitution of July 2, 1870, through Mr. Justice HUNT, say:

"The subscription in question *was made after July* 2, 1870. * The record shows that a vote of the people had before that time been taken, but it does not show that it was authorized under existing laws. * There can be no *bona fide* holding where the Statute did not in law authorize the issue of the bonds. The objection in such case goes to the point of power. There is an entire want of jurisdiction over the subject."

94 U. S. 258.

Where municipal bonds bear date since the Constitution of 1870, the burden of proof rests upon the plaintiff to prove when they were issued, and the authority for the same.

Jackson County v. *Brush*, 77 Ill. 59

Barnes v. *Town of Lacon*, 84 Ill. 461.

In *Aspinwall* v. *Commissioners of Davess*, 22 How. Rep. 378, this court, through Mr. Justice NELSON, say: "It would be difficult to mention a subject of legislation of more public concern or in a greater degree affecting the good government of the county than that involved in this inquiry. The power conferred by this charter among other things embraced the power of taxation. * The Acts of 1848 and 1849, (charter) already referred to, made *it the duty* of the Board of Commissioners *to subscribe* for the stock if a majority of the qualified voters, at an election, determined in favor of subscription. * The election was March 1, 1849. The constitution took effect Nov. 1, 1851. But the subscription was not made until 10th September, that date. * The Court holds that a subscription was necessary to create a contract, binding on the county on one side, to take the stock and pay in bonds, and on the other to transfer the stock and receive

the bonds, *until the subscription* is *made* the contract is unexecuted, obligatory upon neither."

22 Howard, 378–9.

In *Wadsworth* v. *Supervisors of Eau Claire Co.*, Oct. Term, 1880, this court, through Mr. Justice HARLAN, reaffirm and apply the doctrines announced in *Aspinwall* v. *Commissioners*, 22 How. 364: "It is clear that there was no binding agreement or contract between the railroad company and the County of Eau Claire, by which the latter became legally bound * to execute and deliver bonds in aid of the construction of this road. The Act neither in express terms or by necessary implication, made it imperative upon the Board to issue bonds in pursuance of the popular vote. * Its legal effect was to invest the Board with power to supplement the expressed will of the people by an issue of bonds.

13 Chicago Legal News, 153.

The mischief sought to be remedied by this constitutional prohibition upon municipalities, is thus defined by Mr. Justice BREESE, in one of the first cases arising after the adoption of the Constitution of 1870: "It was a declaration of the people on July 2d, 1870, that from and after that day, no matter what may become of the New Constitution (which would not take effect until Aug. 8), no county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad, or private corporation, or make donation to, or loan its credit in aid of such corporation. The passion for subscriptions by the municipalities to every conceivable project presented in corporate form was so violent and prevailed so extensively throughout our State as to demand a speedy, prompt and efficient remedy. * To such an extent had it progressed prior to July 2d, that counties,

towns and cities in this State had become involved to the extent of millions of dollars, for which the property and the labor of the people had become forever pledged. * The increasing demand for railroads, many of those enterprises clamorously thrust upon the people, admonished the convention they could not be too prompt in arresting the tide. A delay of a single week might have produced *insolvency* of these municipalities. * Many who voted for these subscriptions, * did not possess a dollar of their own, or property to be taxed, but by furthering such enterprises produce jobs and contracts by which they would profit as individuals, with none of the burdens of a tax payer. It is no great effort of liberality for a peniless man to vote money out of the pockets of his neighbor. It was in condemnation of such a system the convention so promptly interfered." *Schall* v. *Bowman*, 62 Ill. 324, 5.

It is a well settled rule of construction of grants by leglative corporations, public or private, that only such powers and rights can be exercised by them as are clearly comprehended within the words of the act, or derived from necessary implication having regard to the object of the grant, *any ambiguity or doubt* must be resolved in *favor of the public.*

1 Dillon on Munic. Corp., 175, Ch. V, § 55. Cases cited in note 1.

NELSON, J., in *Minturn* v. *Lorne*, 23 How. 435, 436.

Thompson v. *Lee Co.*, 3 Wall. 321.

Thomas v. *Richmond*, 12 Wall. 349.

In *County of Moultrie* v. *Savings Bank*, 92 U. S. 634, this court through Mr. Justice STRONG, affirming a judgment for certain bonds issued after July 2, 1870, where there was an *agreement to subscribe* in April, 1870, say " *We do*

not assert that this constitutional provision did not abrogate the authority of the Board of Supervisors to make a subscription for railroad stock. *On the contrary we think it did.* But we hold that contracts made under the power while it was in existence were valid contracts and that the obligations assumed by them continued *after the power to* enter into such contracts was withdrawn.

92 U. S. p. 635–6.

In that case the bonds recited the Act, and the Court examine it and the county record, and show that though an innocent purchaser was bound to look at both yet that he would find an agreement for subscription before the new constitution.

We have thus far treated this subject as if the proposition of the town by the vote of June 25, had remained open for acceptance, and no action taken which we conceive would be cut off by the constitution

But the fact is shown in the record, that the company refused to accept in writing, and made a new proposition to the town. (p. 7. ante.) If there was no other point in the case, this is conclusive, as the act only authorizes one vote and one acceptance. The vote was had and was rejected. Thus the power was exhausted, and any further action is *ultra vires.*

Illinois Midland R. R. v. *Wayneville,* 9 Chi. Leg. News 364.

Barnes v. *Town of Lacon,* 84 Ill. 461.

V.

It was error to admit the *coupons or town* orders in the evidence.

It will be observed that no reference is made to the bonds in the interest warrants or the authority claimed

for issuing the same; there are no recitals, but merely an order or check on the Supervisor, who is by law treasurer of the town (Art. VIII, § 1, Chap. 103, Gross Stat. Ill. 1869), drawn by two town officers, the Supervisor and Town Clerk. (Ante p. 7.)

The plaintiff in error being a mere *quasi* corporation with extremely limited powers, had no general authority to issue such orders, and when issued, they could not become negotiable paper, and those who claim such authority must aver and prove it.

1 Daniels Neg. Insts., § 606, 7.
East Oaktand v. *Skinner*, 94 U. S. 245.
Rumford v. *Wood*, 13 Mass. Rep. 193.
The Floyd Acceptances, 7 Wall. 666.
Denning v. *Smith*, 2 Johns, 244.
Lee v. *Monroe*, 7 Cranch, 36.
State v. *Hastings*, 10 Wis. 518.
Drake v. *Phillips*, 40 Ill. 388.
Township of Fishkill v. *Beekman Pl. R. Co.* 22 Barb. 634.

Their whole capacities, powers, and duties, are derived from legislative enactments.

Shepley, Ch. J., *Hooper* v. *Emery*, 14 Maine, (2 Shep.) 375.
Baldwin v. *North Bradford*, 32 Conn. 47.
Booth v. *Woodbury*, Id. 118.
Webster v. *Harwinton*, Id. 131.

The declaration counted on these instruments merely as issued by a general corporation, or individual, there was no averment of power to issue; or that any bonds were ever issued, or that these orders had ever been attached to bonds, neither was there any averment of presentation at place of payment.

In *People ex rel.* v. *Peoria & Oquawka R. R.*, 22 Ill. 153, the Supreme Court of Illinois, WALKER, J., say: "States, counties and corporations, created for public convenience only, are not required to seek their creditors to discharge their indebtedness; but when payment is desired, the demand should be made at their treasury. That is the only place at which payment can be legally insisted upon, and it is the *only place where the Treasurer (Supervisor) can legally have the public funds* with which he is entrusted. * To pay, elsewhere, would require the employment of agents; transmission of public funds at risk of loss, and at considerable expense in charges insurance and discounts, which are not incident to its payment at the treasury.

See cases cited under Points 8, 9, 11.

Our objections, therefore, should have been sustained. See exceptions taken. (Rec. 17.)

VI.

The Court erred in allowing interest.

No case in Illinois has ever been passed upon in this Court involving the question of interest on coupons issued by municipal corporations, though the point has been made in several cases from other states. The rule on this subject, established by the Supreme Court of Illinois at an early day, was adverse to the allowance of interest in such cases.

In *Pekin* v. *Reynolds*, 31 Ill. 259, the Court, WALKER, J., holds, "That all debts of municipal corporations are payable at the treasury of the body; that *interest on coupons* cannot be recovered unless there is a special agreement to that effect. Whatever power these corporations may possess to contract for payment of interest, in the absence of

any express legislation on the subject, *we are of opinion* that their *indebtedness in the absence of such agreement does not bear interest.*"

If such instruments could bear interest in any event without an express agreement, it could only be after a proper demand is made; until then they are not in default. They are not like individuals bound to seek their creditors for payment.

Pekin v. *Reynolds*, 31 Ill. 529.
To the same effect is *People* v. *Tazewell, Co.*, 22 Ill. 147.
People ex rel. v. *Peoria & O. R. R.*, 22 Ill. 153.
Johnson v. *Stark Co.*, 24 Ill. 75.
Robbins v. *Co. Court*, 3 Mo. 57.

Counties are not liable to pay interest on orders or warrants.

Madison Co. v. *Bartlette*, 1 Scam. Ill. 67.
State ex rel. v. *Pacific*, 61 Mo. 155.
Chicago v *People ex rel.*, 56 Ill. 334,
Skinner v. *Platt Co.*, 22 Mo. 437.

And this position has been adhered to by an unbroken line of decisions, which, as held in *Elmwood* v. *Marcy*, 92 U. S. 292, are binding on this Court.

Interest in Illinois is a creature of the Statute. *People* v. *Reynolds*, *supra.*

It is a general rule of law that interest, purely as interest, never draws interest, even if in terms payable annually.

Hastings v. *Wiswall*, 8 Mass. 455.
Wilcox v. *Howard*, 23 Pick. 167.
Henry v. *Flagg*, 13 Mich. 64.
Doe v. *Weaver*, 7 Greenleaf, 48.
Barker v. *International Bank*, 80 Ill. 96.
Childers v. *Dean*, 4 Rand, 406.
Howard v. *Bradley*, 1 App. 31.

In a case in Pennsylvania, *Allison* v. *Juniata Co.*, suit was brought upon the following order, identical with these. "Treasurer of Juniata Co.,

Pay to Wm. M. Allison $52.50 for bounty claims. Witness our hands this 18th July, A. D. 1863.

MM. KOHLER,

Attest: JAMES S. COX,

JOHN HAZZARD, Clerk. Commissioners."

The Court, THOMPSON, J., held that "It could not bear interest in any event. It would embarrass county matters much, and complicate accounts greatly if interest were demandable on these orders."

50 Penna. St. 353.

As to the improper admission of evidence and other objections, urged in the points submitted herewith, it is believed they are sufficiently discussed in that connection to obviate any extended argument here. Attention is called to them again that they may not be considered as waived.

These considerations, it is believed, require a reversal of the judgment of the Circuit Court.

Respectfully submitted,

ALLAN C. STORY,

For Plaintiff in Error.

OFFICE SUPREME COURT U.S.
FILED
MAR
JAMES H. McKENNEY, CLK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1880.

THE TOWN OF WALNUT,
Plaintiff in Error,
vs.
J. H. WADE,
Defendant in Error.

No. 258.
Error to the Circuit Court of the United States, Northern District of Illinois.

ARGUMENT FOR PLAINTIFF IN ERROR.

W. C. GOUDY,
For Plaintiff in Error.

CHICAGO, ILL.:
S. I. BRADBURY & SONS, LEGAL PRINTERS, 78 FIFTH AVE.
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A statement and assignment of errors has been made by Mr. Story, to which reference is made.

POINTS AND AUTHORITIES.

The rule of evidence was changed by the Constitution of 1870, and the burden of proving the authority to issue bonds and a compliance with the conditions precedent, was thrown on the plaintiff, the presumptions in favor of the action of municipal officers not being sufficient.

Jackson Co. v. *Brush*, 77 Ill. 66–67.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 568.
Town of Prairie v. *Lloyd*, 97 Ill. 181.
Town of Windsor v. *Hallett*, Ibid, 205.

I.

The bonds and interest orders were void, because there was no statute authorizing their issue.

1. The act of March 25, 1869, entitled "An act to amend an act entitled an act to incorporate the Illinois

Bright vs Bishop 88 Ills 393
People vs Jackson Co. 92 Ills 452.

Grand Trunk Railway," which it is claimed authorized the bonds, was not passed according to the Constitution of Illinois.

Const. of 1848, Art. III, §§ 21, 23.
Ottawa v. *Perkins*, 94 U. S., 271, and cases cited.
Binz v. *Weber*, 81 Ill. 288.
Johnson v. *The People*, 83 Ill. 435.

2. The title does not express the subject of the bill, and so is in conflict with the Constitution and void.

Const. of 1848, Art. III, § 23.
Lockport v. *Garland*, 61 Ill. 276.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 566.
People v. *Inst. Prot. Deaconess*, 71 Ill. 229.
People v. *Mellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.
Frye v. *Partridge*, 82 Ill. 269.

3. The corporate authorities alone could make the subscription or issue the bonds.

Const. of 1848, Art IX, § 5.
Harward v. *St. Clair Co. Drainage*, 51 Ill. 133.
People v. *Mayor*,, Ibid, 30.
Livingston v. *Wilder*, 53 Ill. 305.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.
Schaeffer v. *Bonham*, 95 Ill. 381.

4. The Supervisor and Clerk are not corporate authorities, because they have no power of taxation and creating debts.

Marshall v. *Silliman*, 61 Ill. 218.
Middleport v. *Ætna Life Ins. Co.*, 82 Ill. 567.
Barnes v. *Town of Lacon*, 84 Ill. 461.

Williams v Town of Roberts 88 Ills 22

Elmwood v. *Marcy*, 92 U. S. 218.
Schaeffer v. *Bonham*, 95 Ill. 381.

5. The act of March 25, 1869, did not authorize an election to be held at which only legal voters could vote.

6. A subscription could not be made or bonds issued without the authority of the legislature, and an election in pursuance thereof.

Barnes v. *Town of Lacon*, 84 Ill. 463.
Allen v. *City of Louisiana*, U. S. Sup. Ct., Oct. T. 1880, 13 Legal News, 185.
Const. 1870, Separate art. on Municipal Subscriptions.
Town of E. Oakland v. *Skinner*, 94 U. S. 258.

7. The word "inhabitants" cannot be read "voters" or "electors."

Const. of 1848, Art. VI, § 1.
Supervisors v. *Davenport*, 40 Ill. 197.
Mills v. *McCabe*, 44 Ill. 194. ✗

8. There was only one election held, and at that one legal electors voted. The inhabitants did not vote.

II.

At the time the subscription was made in January, 1871, it was not authorized under existing laws prior to July 2, 1870, and all other subscriptions being prohibited by the separate section of the Constitution taking effect that day, the subscription was without authority, and the bonds issued void.

Schall v. *Bowman*, 62 Ill. 324.
Township E. Oakland v. *Skinner*, 94 U. U. 256.
Town of Concord v. *Savings Bank*, 92 U. S. 628.

✗ Stewart v. Ft. Scott 2 Dillon 120
Gregoire v. Houghton 2 Dillon 377

Lippincott v. Town of Pana 92 Ills 27. 33
Co. of Moultrie v. Sav. Bk 92 U S. 633. 635

ARGUMENT.

The question of the liability of the Town to the Railway Company as between them, has been conclusively determined by a decree of the Circuit Court of Bureau County, in Illinois, entered August 24, 1874, by which the levy of a tax to pay the principal or interest, was enjoined. But the plaintiff below is not bound by that decree, he being an innocent holder of the bonds by purchase before the bill was filed in that case.

To defeat the bonds in this case, it must appear that there was a want of authority to issue them.

At the threshold, it is important to call the attention of the Court to the fact that these bonds were not signed or issued until after such subscriptions and bonds had been prohibited by a separate article of the Constitution, which was adopted on the 2nd of July, 1870, unless the same had been authorized under existing laws by a vote of the people of the municipality prior to that time. By decisions of the Supreme Court of Illinois it has been held, that in such a case it is incumbent on the plaintiff, who sues on such bonds, to prove the authority to issue them, and a compliance with the terms and conditions of the law conferring the authority. The reason for the rule is that by the fundamental law the policy of the State had been changed. Whatever presumptions might have arisen before such change of policy, in accordance with many decisions of this and other courts in favor of the authority and regularity of municipal bonds, no longer existed. The burden of proof was thrown on the plaintiff.

Jackson County v. *Brush*, 77 Ill. 66, 67.
Middleport v. *Aetna Life Ins. Co.*, 82 Ill. 568.
Town of Prairie v. *Lloyd*, 97 Ill. 181.
Town of Windsor v. *Hallett*, Ib. 205.

Wright vs Bishop, 88 Ill 303
People vs Jackson Co. 92 Ill 453

On the trial below the plaintiff made no effort to prove a compliance with the conditions of the statute of March 25, 1869, which, it was claimed, authorized the issue of the bonds. He read in evidence the statute, a bond and the interest orders, and proved that the plaintiff purchased the bonds for value in 1871, without notice of any defence, and rested. He offered no evidence to show that a subscription had been authorized by a vote of the people before July 2, 1870, or that the proposition had been submitted to the "inhabitants" and approved by them, or that the corporate authorities caused the subscription to be made, or that the subscription had been accepted by the railway company. The Court did not find a compliance with these conditions on the evidence submitted by both parties, and therefore the judgment for the plaintiff was erroneous.

Regardless, however, of the rule as to the burden of proof, I will proceed to discuss the questions of the authority of the Supervisor and Clerk to issue these bonds, and the right of the plaintiff to recover in the Circuit Court.

I.

THE BONDS AND INTEREST ORDERS WERE VOID, BECAUSE THERE WAS NO STATUTE AUTHORIZING THEIR ISSUE.

1. *The act of March 25, 1869, entitled "An act to amend an act entitled an 'act to incorporate the Illinois Grand Trunk Railway,"' which it is claimed authorized the bonds, was not passed according to the Constitution of Illinois.*

The signatures of the presiding officers of each house and the Governor, and the certificate of the Secretary of State are not conclusive evidence of the passage of a

bill. The Journals of the legislature may be resorted to for evidence as to the enactment of a law, and if it appears therefrom that the proceedings were not in conformity to the Constitution, the courts will hold the bill did not become a law.

The Constitution required a vote to be taken on the final passage of all bills by ayes and noes and entered on the Journals; and declared that no bill should become a law without the concurrence of a majority of all the members elect in each house. Const. of 1848, Art. III. § 21.

It is also provided that no private or local law shall embrace more than one subject, and that shall be expressed in the title. *Ibid.* § 23.

On the 28th day of February, 1867, the legislature passed an act entitled "An act to incorporate the Illinois Grand Trunk Railway." 2 Private Laws, 1867, 595.

It is shown by the Journal of the House of Representatives, read in evidence, that a bill entitled "An act to amend an act entitled an act to incorporate the *Illinois* Grand Trunk Railway" was introduced and passed, but no bill of that title was reported to or passed by the Senate. A bill was before the Senate, called a House bill, having the same title except that the word "*Illinois*," is omitted from the title. This must be held to be another and different bill from that voted on by the House. As the title was by the Constitution a material part of a bill, the Journals show that the act as printed never received the vote of both branches as required by the Constitution.

It is settled by numerous decisions of the Supreme Court of Illinois that the Journals of the legislature may be resorted to for the purpose of overthrowing the *prima facia* evidence of the constitutional enactment of a law

by the signatures of the presiding officers and Governor, and the publication of the act among the printed laws; and unless it appears from the Journals that the bill was passed in the manner required by the Constitution, the apparent act will be held to be no statute. These decisions have been collated and the rule of law approved and enforced by this court in *Ottawa* v. *Perkins*, 94 U. S. 271.

If the act relied on as authority to issue bonds never passed the Senate, it will be admitted that there was no statute to authorize their issue, and that they are void even in the hands of innocent purchasers for value.

The only question which can be raised on this point is as to whether the journals do show a vote on the same bill in both branches.

It may be contended that as the bill before the House was marked H. B. No. 231, and the one before the Senate was marked the same, it is proof that the bill itself was the same, notwithstanding the fact that the title of one was "An act to Amend an Act entitled an Act to Incorporate the *Illinois* Grand Trunk Railway," and the title of the other, "An Act to Amend an Act entitled an Act to Incorporate the Grand Trunk Railway."

There was no provision of the Constitution, or any statute, or rule requiring bills to be numbered; that is the custom of clerks for convenience. But the Constitution did require that every private or local law should not embrace more than one subject, and that should be expressed in the title. Const. of 1848, Art. III. § 23. This was a private and local law. The Supreme Court of Illinois has construed this provision and held that the title is an indispensible part of a bill, and any part of a bill on a subject not expressed in the title mentioned in the body of the bill is void.

The Supreme Court of Illinois has carried the rule so far as to hold that it is the title at the head of the bill when the vote is taken on the passage that is contemplated by the Constitution, and not a title adopted after the vote is taken, as a title for the act of legislation.

Binz v. *Weber*, 81 Ill. 288.

Johnson v. *The People*, 83 Ill. 435.

Therefore a vote in the Senate on a bill entitled an Act to Amend an Act to Incorporate the Grank Trunk Railway was not a vote on an Act to Amend an Act to Incorporate the *Illinois* Grand Trunk Railway. This is true even if the body of the bill was the same in each house as well as the number. The title of one indicates to the member or senator a certain corporation, and the title of the other a different corporation. The "subject" of one is different from the "subject" of the other. *This is not a question of identification. The question is, was the bill passed according to the Constitution, so as to become a law?*

This is the settled rule of law in Illinois, and under it the bill did not pass the two branches of the legislature as required by the Constitution, and never became a valid statute. The speculation, or even the fact, that there was really one bill, and a clerical mistake made by leaving out the word "Illinois" from the title when it was sent to the Senate, so that the error was carried through that branch, does not help the matter. The rule is imperative that the title shall express to the member the subject on which he is to vote, and failing to do that, the vote is null and void. Not a Senator voted in regard to the charter of the *Illinois* Grand Trunk Railway, but his vote related to the charter of the Grand Trunk Railway.

Reference may be made to *Larrison* v. *Peoria R. R.*

77 Ill. 11, as an authority that the number is evidence of the identity of the bill, even if the name of the corporation differs in the two houses. That case does so hold, and the reason given is that the title was not essential. But that case is expressly overruled by *Binz* v. *Weber*, 81 Ill. 288, because the title was not only essential, but by the constitution indispensable. This is the last expression of the highest judicial tribunal, and it has been approved in *Johnson* v. *The People*, 83 Ill. 435. The Larrison case was decided long after the bonds in controversy were issued and purchased by the appellee, so that no reliance was placed on that decision.

2. The title does not express the subject of the Bill, and so is in conflict with the Constitution and void.

The title indicates an amendment to a railway charter; the body relates to cities, incorporated towns, and townships. The subjects are different

The Constitution provides that "No private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title." Art. III, § 23. This was a local and special law. It embraced, perhaps, but one subject, but that is not expressed in the title. The subject of the act is the subscription of stock by certain municipal corporations to the Illinois Grand Trunk Railway. The charter of the railway company is not altered or amended. The change relates to the powers of the municipal corporations. It touches the powers, rights, or duties of the railway corporation in no respect. For these reasons the act is void.

Lockport v. *Garland*, 61 Ill. 276.

Middleport v. *Aetna Life Ins. Co.*, 82 Ill. 565.

People v. *Inst. Prot. Deaconess*, 71 Ill. 233.
People v. *Nellen*, 32 Ill. 181.
Binz v. *Weber*, 81 Ill. 288.
Frye v. *Partridge*, 82 Ill. 269.

3. *The corporate authorities alone could make the subscription or issue bonds.*

Art. IX. § 5 of the Constitution of 1848, prohibited the legislature from authorizing any person to impose a burden by debt on the township, except the corporate authorities. This is settled law in Illinois.

Harward v. *St. Clair Co. Drainage Co.*, 51 Ill. 133.
People v. *Mayor*, Ibid, 30.
Livingston v. *Wilder*, 53 Ill. 305.
Wilder v. *East St. Louis*, 55 Ill. 136.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.

Even if the act, in express terms, authorized the creation of a debt to be paid by the township in any other way than by corporate authorities, the act would be void. To be sustained the act must be construed in harmony with the Constitution in this respect.

As the subscription for stock was made and the bonds in payment therefor were issued by the Supervisor and Town Clerk, the questions presented are these:

First. Did the Legislature authorize the Supervisor and Clerk to make the subscription and issue the bonds?

Second. Are the Supervisor and Clerk corporate authorites within the meaning of Art. IX, § 5 of the Constitution?

By the language of the Act the Supervisor and Clerk could not *alone* subscribe for the stock and issue the bonds. It provides for taking a vote of the inhabitants and then reads: "*If a majority of the voters*

shall be for subscription then the corporate authorities of said city, town or township AND *the Supervisor and Town Clerk of said township so voting*, SHALL CAUSE *said subscription to be made.*"

The Legislature understood correctly that the Supervisor and Clerk could not, without the consent of the corporate authorities impose a debt on the town. The Legislature did not indicate who should write the name of the town to the subscription book or who should execute the bonds, but left the persons to be designated by the corporate authorities and the Supervisor and Clerk, for the statute says, they *shall cause* the subscription to be made and *shall cause* the bonds to be issued. Action was contemplated by which the details of a subscription and bonds were to be settled.

It is important to determine who are corporate authorities of a township.

This question has been conclusively settled by the Supreme Court of Illinois that the corporate authorities, intended by this section of the Constitution, must have the power of taxation and creating debts to be paid by taxes, and if officers they must be elected by the legal voters of the municipal corporation.

Livingston v. *Wilder*, 53 Ill. 305.
Harwood v. *Drainage Co.* 51 Ill. 136.
People v. *Thayer*, Ib. 30.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.
Schaeffer v. *Bonham*, 95 Ill. 381.

4. The Supervisor and Clerk are not corporate authorities, because they have no power of taxation and creating debts. They can only make subscriptions of

People v. *Inst. Prot. Deaconess*, 71 Ill. 233.
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Marshall v. *Silliman*, 61 Ill. 218.
Elmwood v. *Marcy*, 92 U. S. 289.
Schaeffer v. *Bonham*, 95 Ill. 381.

4. The Supervisor and Clerk are not corporate authorities, because they have no power of taxation and creating debts. They can only make subscriptions of stock and issue bonds when authorized by a majority of

the legal voters of the township at a regular or special town meeting or election, and when the legislature has authorized the subscription and bonds upon such a vote.

Marshall v. *Silliman*, 61 Ill. 218.
Middleport v. *Ætna Life Ins. Co.* 82 Ill. 567.
Barnes v. *Town of Lacon*, 84 Ill. 461.
Elmwood v. *Marcy*, 92 Ill. 218.
Schaeffer v. *Bonham*, 95 Ill. 381.

The corporate authorities of a township or town are the legal voters. They alone have the power of taxation and creating debts to be discharged by taxation; they alone come within the definition of the "corporate authorities" intended by § 5, Art. IX of the Constitution as decided by the Supreme Court of Illinois in cases cited *supra*.

It is true that in *Marshall* v. *Silliman*, the Court use the expression that the Supervisor and Clerk are only a *part* of the corporate authorities, but it is manifestly an inadvertent expression. Doubtless it was intended that they are part of the officers—a part of the Board of Auditors. It may be well to examine the Township Organization Statute to see who has the power of levying taxes and creating debts.

In cities and incorporated towns or villages where there is a legislative branch of the municipal government, the power of taxation is exercised by such legislative branch; and in counties, the Board of Supervisors or County Commissioners exercise the power of taxation. But in towns or townships in a township organization system, there are no officers or set of officers empowered to impose taxes or create debts. The power is placed in the legal voters who determine at town meetings or special elections, held in pursuance of law, what debts shall be created and taxes levied. This was the law in Illinois in 1869–1871.

Williamson v. Town of Roberts 88 Ill. 22
Town of Douglas v. Atlantic Co. Bk. 97 Ill. 228

The Supervisor, Clerk, and Justices of the Peace (and in the absence of either the Assessor, or Collector, or both) constitute the Board of Auditors to examine and audit all claims against their respective towns. Gross Stat. 1869, Ch. 103, Art. X, § 1, *et seq.*

The Justices of the Peace, Supervisor and Clerk, are a board to accept resignations and fill vacancies. Ib. Art. VII, § 123.

The Supervisor, Assessor and Clerk, are a board of health. Ib. Art. X, § 1.

But none of these boards could create a debt or levy a tax.

The Statute provides for annual town meetings and declares that:

"The *electors* of each town shall have power at their annual town meetings:

* * * * * * * * *

4. To direct such sum to be raised in such town for prosecuting or defending such suits, or for the support and maintenance of roads and bridges, *or for any other purpose*, as they may deem necessary; and also to authorize and require the Commissioners of Highways to assess a road tax, etc.

5. To take measures and give directions for the exercise of their corporate powers.

* * * * * * * * *

12. To make all such by-laws as may be necessary to carry into effect the powers herein granted." Ibid Ch. 103, Art. IV, § 5.

It thus appears that the corporate authorities of a township having the qualifications required by § 5, Art. IX, of the Constitution, as construed by the Supreme Court of Illinois, in *Marshall* v. *Silliman*, and other cases cited, *supra*, and approved by this Court, in

Elmwood v. *Marcy*, were the legal voters or electors. It is not contended that the vote should be taken only at an annual town meeting; if the legislature authorized a special election, that is within the Constitution. I may even admit in this case that the Legislature could confer on township officers elected by the voters the power to subscribe and issue bonds.

But it is clear that the Legislature in the act of March 25, 1869, did not confer power on the Supervisor, and Clerk, for it is provided that, "the corporate authorities," *and* Supervisor, and Town Clerk, of the township so voting, shall cause the subscription to be made, and upon its acceptance by the directors of the company, shall cause the bonds to be issued in conformity with said vote.

In view of the decisions cited, it is clear the Legislature intended by the corporate authorities, the legal voters, or electors. That is the only construction consistent with the Constitution. What did the law require? It left to the legal voters, and Supervisor, and Clerk, the question as to creating the liability. The legal voters could express their approval or disapproval of any proposition to subscribe stock, which might embrace the persons who should make the subscription, and if the Supervisor and Clerk concurred, the authority to make the subscription would be established by *the action of the corporate authorities and Supervisor and Clerk.*

It appears by the record that a special election was held June 25, 1870, in pursuance of the provisions of the special act of March 25, 1869, at which the voters voted that the town would subscribe for $30.000 of the stock of Illinois Grand Trunk Railway. Rec. 15, 19.

The bond recited: "This bond is issued under and by

virtue of the Charter of said Illinois Grand Trunk Railway, and amendment thereto, and other laws of the State of Illinois, and in accordance with the vote of the *electors* of said township at the special election held June 25, 1870, in accordance with said charter and amendment and laws."

It being conceded that an election was held, at which the electors or voters voted in favor of the subscription, we are brought to the question.

5. *The act of March 25, 1869, did not authorize an election to be held at which only legal voters could vote.*

The act first provides that the proposition for subscription should first be submitted to and approved by the *inhabitants* of the township. It then provides that upon the application of any ten *voters* of the township, it shall be the duty of the Clerk of the Township immediately to call an election *in the same manner* that other elections are called for the purpose of determining whether the township will subscribe.

The *manner* in which other elections are called is fixed by § 9, Art. IV, of the Township Organization Act. Gross Stat. 1869, 744. It is by giving ten days' notice by posting and publication.

The call being made as required by the act of March 25th, 1869, and the township act, and the polls being opened, *who by the act of March 25, 1869, could vote? The inhabitants or legal voters?* If only *legal voters*, then there was a failure by the Legislature to provide for a mode of submitting the proposition to the *inhabitants*, whose consent was a condition precedent. If the *inhabitants* were to vote at this election, then the Legislature failed to provide for the expression of the will of the *legal voters*, who constituted the *corporate authorities* mentioned in the Constitution on the question of subscription.

The statute is as clear as language can make it, that the debt could not be created without the consent of the inhabitants. It does not declare that the question shall be submitted to the legal voters as well as the inhabitants. It therefore seems to force the conclusion that the legislature made no provision for an election by the legal voters, who alone possessed the power to tax and create debts.

6. A *subscription could not be made or bonds issued without the authority of the Legislature and an election in pursuance thereof.*

Barnes v. *Town of Lacon*, 84 Ill. 463.

Allen v. *City of Louisiana*, U. S. Sup. Court, Oct. T. 1880. 13 Legal News 185.

The Supreme Court of Illinois has held that power could be conferred on village trustees to subscribe without a vote of the electors. But since July 2, 1870, no subscription could be made except authorized by a *vote of the people* prior to that time.

Const. 1870, Sep. Art. Mun, Subscriptions.

Town of E. Oakland v. *Skinner*, 94 U. S. 258.

7. *The word "inhabitants" cannot be read "voters" or "electors."*

The township organization act in force in 1870, provided that the citizens of the several towns of the State qualified by the constitution to vote at general elections should be legal voters in the townships.

Gross Stat. 1869 Chap. 103 Art. 4, § 1.

The Constitution of 1848, which was in force at that time provided that in all elections every white male citizen above the age of 21 and having resided in the State one year next preceding any election, shall be entitled to vote at such election * * * and no such

citizen or inhabitant shall be entitled to vote except in the district or county in which he shall actually reside at the time of such election. Art 6, § 1.

That Constitution used the terms citizens, inhabitants, electors, and shows that the words were not understood to be equivalents, but that each conveyed a seperate and distinct meaning. The word "inhabitant" is used when the subject of apportionment is considered, the word "citizen" with reference to civil rights, other than those of voting. The section which prescribes the qualification of a voter, calls such voter an elector. It was held in *Mills* v. *McCabe*, 44 Ill. 197, that a man who was an inhabitant and had passed through the forms of admission to citizenship in a court not having jurisdiction of that subject, was not a qualified elector under the laws of Illinois. In the *Board of Supervisors* v. *Davenport*, 44 Ill. 203, the definitions of resident, inhabitant, citizen, were discussed by the Court for the purpose of determining the construction of the Revenue law of Illinois, and it is there stated that "inhabitant" implies a more fixed and permanent abode than "resident" and frequently imports many privileges and duties which a mere resident could not claim or be subject to. A resident may have his domicile and habitation in an other place and a man may be an inhabitant where he has not a right to vote. The legislature must be supposed to have used the word "inhabitants" in this Statute in the ordinary meaning of the term. If the Court should strike out "inhabitants" and substitute "electors" it would be to change the act and the intention of the Legislature.

A reference to many Acts of the General Assembly of 1869, contained in the same volume with the one under consideration, by which municipal corporations

† Stewart vs Foster 2 Binney 120
Spraging vs Haughton 2 Scam 377

were permitted to subscribe in aid of railroads, will show that all required the question of subscription to be submitted to the "qualified electors" or "legal voters," except two, pages 75, 208, where the submission is required to be made to the legal voters ~~or~~ and taxpayers.

It is supposed that the Legislature intended to throw an additional restraint or protection against towns named in the Act of March 25, 1869, in regard to the creation of a liability for railroad stock. This appears from the fact that the Act required a concurrent action of the corporate authorities and the Supervisor and Town Clerk, while in most of the Acts only the consent of the corporate authorities was required, As in the two instances to which reference is made, the Legislature required the consent of the legal voters and the tax-payers, but in this case the condition imposed by the Legislature was that the proposition should first be submitted to the inhabitants, then to the corporate authorities, and lastly to the Supervisor and Town Clerk.

This court has recently held in *Allen v. City of Louisiana*, in construing the Constitution of Missouri, and the Charter of the City of Louisiana, that a subscription could not be made on a vote of two-thirds of the qualified voters, unless the proposition was also submitted at the election under the authority of the City Council ~~and~~ to the resident taxpayers of the city and a majority of such tax-payers consented to the subscription.

The court, through the Chief Justice, says: "In the construction of a statute, every word is, if possible, to be given some effect. Nothing is to be stricken out if it can be avoided. It is not to be presumed that the Legislature intended any part to be without meaning. In the light of these maxims of interpretation, the sub-

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It is supposed that the Legislature intended to throw an additional restraint or protection against towns named in the Act of March 25, 1869, in regard to the creation of a liability for railroad stock. This appears from the fact that the Act required a concurrent action of the corporate authorities and the Supervisor and Town Clerk, while in most of the Acts only the consent of the corporate authorities was required, as in the two instances to which reference is made. The Legislature required the consent of the legal voters and the tax-payers, but in this case the condition imposed by the Legislature was that the proposition should first be submitted to the inhabitants, then to the corporate authorities, and lastly to the Supervisor and Town Clerk.

This court has recently held in *Allen* v. *City of Louisiana*, in construing the Constitution of Missouri, and the Charter of the City of Louisiana, that a subscription could not be made on a vote of two-thirds of the qualified voters, unless the proposition was also submitted at the election under the authority of the City Council ~~and~~ to the resident taxpayers of the city and a majority of such tax-payers consented to the subscription.

The court, through the Chief Justice, says: "In the construction of a statute, every word is, if possible, to be given some effect. Nothing is to be stricken out if it can be avoided. It is not to be presumed that the Legislature intended any part to be without meaning. In the light of these maxims of interpretation, the sub-

stantial object of this section evidently was to limit the power to subscribe to the stock of railroad companies connecting with the city more than had been done by the Constitution. Under the Constitution—two-thirds vote of the qualified voters, taken under the authority of law would be enough, but under the Charter, the two-third vote of the qualified voters and a majority vote of the tax payers were both necessary." "As it stands it operates as a Charter protection to the tax payers against the imposition of burdens of this kind, by the qualified voters alone, but of itself, it authorizes no subscription."

So in this case effect must be given to the word inhabitants, and there is no authority for striking it out and substituting the word electors. It is clear that the Legislature intended to require the giving the privilege to all inhabitants who might choose to exercise it, of voting on the question of subscribing for stock. This would include actual legal voters, ~~or~~ and those who were aliens or citizens not having the requisite residence to be legal voters. Whether it included women and children is immaterial. It was competent in the Legislature to require the consent of a majority of all persons without distinction of age or sex, to give consent to such a burden. Practically at such an election, even if it included every individual, only those who felt an interest in the question of taxation would be likely to vote.

8. *There was only one election held, and only legal electors voted; the inhabitants did not vote.*

The bond itself recited that it was issued "in accordance with a vote of the *electors* of said township at a special election held June 25, 1870." The Court found "that the *voters* of said town, at an election duly called and held in said town pursuant to the provisions

of said act of the 25th day of June, 1870, voted that said town would subscribe." There was no evidence whatever tending to show that the inhabitants voted at that election or at any other.

Conclusions from these Propositions.

If there was no constitutional act passed by the legislature it would be admitted that the bonds in the hands of the plaintiff below were void, and no recovery could be had. It is clear from the Constitution and decisions construing it in Illinois that a vote of the electors of a township was indispensable to make a subscription after the adoption of the Constitution of 1870, and that such electors constituted the corporate authorities, who alone could create a debt or levy a tax. If the act is construed so as not to provide for an election at which the legal voters could vote on the question of subscription, then there was no valid legislative authority to make a subscription or issue the bonds. There was no election held submitting the proposition of subscribing to the inhabitants of the township, and until that had been done and approved by them, there was no power or authority to make a subscription or issue the bonds. If the act is to be construed as contemplating two elections, one at which the electors could express a voice, and the other at which the inhabitants could vote, then there has not been such a compliance with the act as to confer an authority, because only one election was held and at that only electors voted. For these reasons the conclusion must be that the bonds are absolutely void for want of authority in the persons who signed them and issued them.

II.

AT THE TIME THE SUBSCRIPTION WAS MADE IN JANUARY, 1871, IT WAS NOT AUTHORIZED UNDER EXISTING LAWS PRIOR TO JULY 2, 1870, AND ALL OTHER SUBSCRIPTIONS BEING PROHIBITED BY A SEPARATE SECTION OF THE CONSTITUTION, TAKING EFFECT ON THAT DAY, THE SUBSCRIPTION WAS WITHOUT AUTHORITY AND THE BONDS ISSUED VOID.

In the discussion so far I have called attention only to an election held June 25, 1870, at which a proposition to subscribe $30,000 was submitted. The subscription was not made for $30,000, but $40,000, and it was not made in pursuance of the election of June 25, 1870, free from any other questions affecting the authority. It may be assumed that when the Constitution took effect July 2, 1870, that there was authority under existing laws to subscribe for $30,000 of stock, and that if such sum had been subscribed free from any other complications that the provisions in the Constitution would not have destroyed the authority to make the subscription. But the record shows that a communication, dated August 3, 1870, was sent by the directors of the railway company to the Supervisor, Town Clerk and legal voters of the town of Walnut, which in effect declined to accept a subscription of $30,000, and gave notice that only one of $40,000 would be received. This communication was received August 6, 1870, and recorded upon the records of the Town Clerk's office, of the town of Walnut. (Rec. p. 20.)

What was the effect of such declination? How did it leave the authority to make the subscription? Clearly it was the end of the proposition. The act expressly provided that upon the acceptance of a subscription by the directors of the company the bonds might be issued

in conformity with the vote. If not accepted, the bonds could not be issued. When the constitutional provision was adopted there was a proposition pending to subscribe $30,000, and the proviso of the prohibitory section did not destroy that offer, but it did prevent any other proposition being made, any other vote being taken or any other subscription being made. When the directors of the company, according to the terms of the act of March 25, 1869, notified the town that the pending proposition was rejected, that was an end of the authority under the law, and no new arrangement could be entered into.

Notwithstanding the termination of the authority an election was held August 6, 1870, at which a proposition was submitted authorizing a subscription of $10,000 additionally to the $30,000 already voted. This in fact was the vote on the proposition to subscribe $40,000, the sum which the directors had notified the town would be accepted, and so the matter was treated in all the proceedings afterwards.

The election of August 6, 1870, was void and conferred no authority.

Schall v. *Bowman*, 62 Ill. 324.

Township E. Oakland v. *Skinner*, 94 U. S. 256.

Town of Concord v. *Savings Bank*, 92 U. S. 628.

In January, 1871, on this state of facts the Supervisor and Town Clerk subscribed for $40,000 of the capital stock of the Illinois Grand Trunk Railway, and issued and delivered 400 bonds to said railway in payment of said subscription, each for the sum of $100, making $40,000, and the bonds were numbered from 1 to 400. It is true that the bonds numbered from 1 to 300 recited

× Lippincott v. Penny Pana 92 Ills. 27
Co. of Moultrie v. Sav. Bk 92 U.S. 633

the issue by virtue of an election held June 25, 1870, and the bonds numbered from 301 to 400 recited that they were issued by virtue of an election held August 6, 1870, yet the act of subscription and issue of the bonds was a unity and rested for validity upon the vote of August 6, 1870, to subscribe $10,000 in addition to the $30,000 already voted, for the authority conferred by the vote of June 25, 1870, had ceased to exist when the proposition was rejected by the directors of the company. The only acceptance, if made under the act, was in January, 1871, of the subscription of $40,000, not $30,000, nor $10,000, and payment was made on the full amount of $40,000 by bonds for that sum. If there was no authority to make the proposition at the time it was accepted and for the amount which was embraced in the proposition and accepted, then the entire proceeding was void.

Schall v. *Bowman*, 62 Ill. 324.

Township E. Oakland v. *Skinner*, 94 U. S. 256.

Town of Concord v. *Savings Bank*, 92 U. S. 628.

CONCLUSION.

Other points have been discussed by Mr. Story for the plaintiff in error to which I have nothing to add. I have confined myself to the question of liability on the bonds, in any event, and the sufficiency of the proof to entitle the plaintiff below to a judgment.

W. C. GOUDY,

For Plaintiff in Error.



OFFICE SUPREME COURT U. S.
FILED
MAR 7 1881

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1880.

THE TOWN OF WALNUT,
Plaintiff in Error,

vs.

J. H. WADE,
Defendant in Error.

No. 258.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF ILLINOIS.

THOMAS S. McCLELLAND,

Of Counsel for Defendant in Error.

GEORGE A. SANDERS,

Attorney for J. H. Wade.

CHICAGO:

HORACE O'DONOGHUE, LEGAL PRINTER, 42 BRYAN BLOCK, 170 LA SALLE STREET.

1880.

IN THE

SUPREME COURT OF THE UNITED STATES,

October Term, A. D. 1880.

THE TOWN OF WALNUT, *Plaintiff in Error,*

vs.

J. H. WADE, *Defendant in Error.*

No. 338.

Error to the Circuit Court of the Uuited State, Northern District of Illinois.

FACTS.

This suit was originally brought upon ten hundred and ten (1010) coupons of the denomination of $10 each, and representing the annual interest on 321 bonds, for the sum of $100 each, executed by the plaintiff in error, and purchased by the defendant in error. The coupons sued on matured in the years 1874, '75, '76 and '77. The bonds from which they were detached were issued by the town of Walnut in aid of the Illinois Grand Trunk Railway, and in payment of stock in that railway subscribed for by the town and delivered to it.

The coupons bore the numbers from 1 to 200, both inclusive, 251 to 260, and from 281 to 400, both inclusive, and were cut from the bonds bearing corresponding numbers.

Before judgment was rendered in the cause by the court below, the defendant in error took a non-suit as to all coupons sued on numbered from 301 to 400, inclusive, and withdrew the same from the consideration of the court, and judgment was rendered upon those coupons alone which bore numbers under 300.

The bonds Nos. 1 to 300, inclusive, were issued under a vote taken June 25, 1870.

Those numbered from 301 to 400 were issued in pursuance of a vote of the town taken August 6, 1870.

It may not be improper, in passing, to note that a suit was subsequently brought upon the coupons numbered from 301 to 400 by Mr. Wade against the town of Walnut, setting out, *in haec verba*, that they were issued under the vote of August 6, 1870, a demurrer sustained by the court below to the declaration, and an appeal taken by Wade to this court, and now stands as case No. 489 of the October Term, 1880.

In the case at bar the issues of fact were submitted to the court without the intervention of a jury, and a special finding was had, as appears in the record. (*Printed Record, pp. 14, 15.*)

The Legislature of the State of Illinois, under the title of "An "act to amend an act, entitled, 'An act to incorporate The Illinois "Grand Trunk Railway,'" passed a bill, which was duly approved and became a law March 25, 1869, providing that municipalities along the line of the railway, of which plaintiff in error was one, might subscribe for stock in the road, and issue bonds in payment therefor. The text of this act is incorporated in the record. (*Printed Record, p. 16.*)

The law provided for an election by the people to be first held, and if a majority of the votes cast should be "for subscription," the corporate authorities of the city, town or township, "and the SUPERVISOR and TOWN CLERK of the township so voting" should cause the subscription to be made, and bonds to be executed and delivered in conformity with the vote.

This act, by its terms, provided that it should be liberally construed for the purposes intended, and was made a public act.

On June 25, 1870, in pursuance of the act, and in pursuance of a petition properly signed and due notice given, the electors of

the plaintiff in error voted to subscribe for $30,000 of the capital stock of the railway, and in payment therefor issue the bonds of the town for that amount, which bonds, of the denomination of $100 each, and numbered from 1 to 300, payable in ten years from January 1, 1871, to the Illinois Grand Trunk Railway, or bearer, at Springfield, Illinois, and bearing 10 per cent. interest, as evidenced by the coupons attached to the same, were, sometime in October, 1870, executed by the supervisor and town clerk of the plaintiff in error, as directed by the act and the vote of the people, and after January 1, 1871, delivered by the officers of the town to the officers of the railway in payment of the stock subscription then made by the officers of the town, and in its behalf.

The recitals on the face of these bonds show that they were issued in pursuance of the election of June 25, 1870, and the act of March 25, 1869. (*Special finding, p. 15; copy of bond, p. 18; and bill of exceptions, p. 19—Printed Record.*)

The bonds were endorsed by the Illinois Grand Trunk Railway, and duly registered in the office of the Auditor of Public Accounts of the State of Illinois, April 15, 1871, in pursuance of a law of that State. (*Printed Record, p. 18.*)

At the trial it was shown that the electors of the town of Walnut held another election August 6, 1870, under the foregoing act, and voted to subscribe for $10,000 of the capital stock of the railway in *addition* to the $30,000 voted in June preceding, and $10,000 additional bonds, to be issued in payment therefor. In pursuance of that vote, the town supervisor and clerk did, in October, 1870, issue the additional $10,000 in bonds, payable in New York, of the denomination of $100 each, and numbered from 301 to 400, both inclusive.

Originally coupons from these bonds were included in this suit, but being withdrawn, as before stated, from the consideration of the court, their validity or invalidity cannot be inquired into at this time, and in the case at bar.

On September 27, 1871, the defendant in error bought, in the New York market, 321 of the foregoing bonds, numbered from 1 to 200, 251 to 260, and 281 to 400, paying cash, at the rate of 92½ per cent. of their face value, with the coupons attached to each, in good faith and without notice of any defense to the bonds or coupons. All coupons, up to those sued on, were duly paid. (*Special finding, p. 15, and p. 19, Printed Record.*)

Defendant in error filed his declaration May 5, 1877, containing a special and the common counts.

To this the plaintiff in error filed a plea of general issue and three special pleas. To the special pleas a demurrer was filed and sustained by the court, but no exception being taken to the ruling of the court, no question of pleading arises in the case (*Printed Record, pp. 6, 7, 8, 9 and 10.*)

The parties to the suit stipulated that the signatures to the bonds and coupons were the genuine signatures of the suprervisor and town clerk of plaintiff in error, and that these persons were supervisor and town clerk respectively at the time the bonds were executed and delivered. (*Printed Record, p. 11.*)

On March 12, 1878, the parties filed their stipulation, submitting the cause to the court without the intervention of a jury. (*Printed Record, p. 13.*)

On the same day the cause went to a hearing, and the defendant in error introduced in evidence:

1. A certified copy of the act of the Legislature under which the bonds and coupons were issued. (*Printed Record, p. 16.*)

2. The coupons sued on, of which No. 251, incorporated in the record, is a correct copy, except as to the number. (*Printed Record, p. 17.*)

3. Bond No. 300, as a correct copy of all the bonds from which the coupons were detached, except as to the number. (*Printed Record, p. 18.*)

4. The deposition of defendant in error, showing that he bought the bonds and coupons in open market for 92½ cents on

the dollar, before maturity of the first interest coupons, in good faith, and without notice of any defense. That interest was duly paid up to time of default in payment of the coupons sued on. (*Printed Record, p. 19.*)

5. Evidence showing execution of bonds and coupons, and the indorsements thereon. (*Printed Record, p. 19.*)

6. Evidence to show the delivery of the bonds by the town to the railway, the subscription for stock, the sale of the bonds and the building of the road through the town, in accordance with the contract. (*Printed Record, p. 15.*)

And rested his case.

The plaintiff in error introduced certified copies of the town proceedings calling and holding the election of June 25, 1870, at which it was voted to subscribe for $30,000 of stock, and issue the bonds of the town in payment therefor.

Also copies of the proceedings of the town calling and holding the election of August 6, 1870, at which $10,000 additional bonds were voted to pay for an equal amount of stock.

Also certified copies of some court proceedings had in the Circuit Court of Bureau County, Illinois, commenced in November, 1872, wherein the plaintiff in error sought to restrain the town, county and State officers from levying and collecting taxes to pay these bonds and coupons.

Also what purported to be the House and Senate Journals of the Twenty-sixth General Assembly of the State of Illinois, so far as the same related to the passage of the act under which the bonds and coupons in question were issued. (*Printed Record, pp. 19 to 26, inclusive.*) And rested.

The defendant in error introduced, in rebuttal, a certified copy of the Senate and House Journals of the Twenty-sixth General Assembly of the State of Illinois, so far as the same related to the passage of House bill No. 231, entitled "An act to amend an act

entitled 'An act to incorporate the Illinois Grand Trunk Railway.'" (*Printed Record, p. 26.*) And the court took the cause under advisement.

On March 22, 1878, defendant in error withdrew from the consideration of the court, all coupons numbered from 301 to 400, and the court rendered his special finding and judgment upon all coupons in suit, under No. 301, (*Printed Record, p. 15*), as follows:

SPECIAL FINDING.

"*First*—That said defendant town, by its town clerk and supervisor, did, some time in the month of October, A. D. 1870, make its four hundred bonds for the sum of one hundred dollars each, and numbered consecutively from one to four hundred inclusive, amounting in the aggregate to the sum of forty thousand dollars, said bonds bearing interest at the rate of 10 per cent. per annum, payable annually, and the principal thereof, payable to the Illinois Grand Trunk Railway, or bearer, on the first day of January, A. D. 1881, and dated January 1, 1871, said interest being evidenced by ten interest warrants, or coupons, for ten dollars each, payable to bearer, and attached to said bonds, as set out in the declaration in this case. That said bonds recited on their face that they were issued to said Illinois Grand Trunk Railway by authority of an act of the Legislature of the State of Illinois, approved March 25, 1869, entitled: 'An act to amend 'an act entitled an act to incorporate the Illinois Grand Trunk 'Railway,'" and 'in pursuance of a vote of the people of said 'town, had and taken June 25, 1870,'" being the same bonds described in plaintiff's declaration. That the coupons described in said declaration were cut from the first three hundred of said bonds, and are all due and unpaid.

"*Second*—That some time in the month of January, A. D. 1871, the supervisor and town clerk of said town, acting for and in behalf of said town, subscribed for forty thousand dollars of the capital stock of said Illinois Grand Trunk Railway, and is-

" sued and delivered said four hundred bonds to said railway in " payment of said subscription, and within ten or fifteen days " therefrom sold said bonds for value, and applied the proceeds to " the construction of its railroad through said town; and said " plaintiff, in September, 1871, bought the bonds from which the " coupons sued on were detached, and also all the coupons thereto " attached and unpaid, in good faith, in the New York market, and " paid therefor in money at the rate of ninety-two and one-half " (92½) cents on the dollar, without actual notice of any defense " whatever against said bonds or coupons.

" *Third*—That the said act of the Legislature of the State of " Illinois, approved March 25, 1869, entitled 'An act to amend an " act, entitled 'An act to incorporate The Illinois Grand Trunk " Railway,' was duly and constitutionally passed by the General " Assembly of the State of Illinois.

" *Fourth*—That the voters of said town, at an election duly " called and held in said town, pursuant to the provisions of said " act, on the 25th day of June, 1870, voted that said town would " subscribe for thirty thousand dollars of the capital stock of said " railway, and in payment therefor issue the bonds of said town " for the amount of said stock, bearing 10 per cent. interest annu- " ally, and the principal sum payable in ten years from their date.

" That on the 6th day of August, 1870, at another election " called and held in pursuance of the requirements of said act, the " electors of said town voted to subscribe for ten thousand dollars " of the capital stock of said railway, in addition to the thirty " thousand dollars voted on the 25th day of June, 1870, to be paid " for in bonds of said town, bearing the same rate of interest, and " payable at the same time as the bonds to be issued for said thirty " thousand dollars subscription.

" *Fifth*—That the coupons offered in evidence, and upon which " judgment is rendered in this case, were cut from bonds of said " issue, numbered from 1 to 300," and entered judgment upon the finding.

BRIEF.

I.

This cause having been submitted to the Circuit Court without the intervention of a jury, and the court having made a special finding upon all the facts in the case, there is nothing left for this court to determine but the question whether or not the findings of the court below are sufficient to sustain the judgment. The finding of the court, standing for a verdict of a jury upon the facts, will not be inquired into by this court, and the plaintiff in error is concluded from bringing the whole record into review by bill of exceptions.

Saulet v. *Shepherd*, 4 Wall. 507.
Coddington v. *Richardson*, 10 Wall. 516.
Copelin v. *Ins. Co.*, Ibid, 462.
Bassett v. *United States*, 9 Wall. 38.
Norris v. *Jackson*, Ibid, 125.
Miller v. *Ins. Co.*, 12 Wall. 285.
Insurance Co. v. *Folsom*, 18 Wall. 249.
Jennisons v. *Leonard*, 21 Wall. 307.
Insurance Co. v. *Sea*, 21 Wall. 161.

II.

The act, under which the bonds and coupons were issued, was duly and constitutionally passed by the Legislature of the State of Illinois, and the court so found.

The omission of the word "Illinois" in the title of the bill, in its passage through the Senate, does not affect it. The bill is and was designated as "House Bill No. 231," and preserved that description in its passage through both houses. The omission of the word "Illinois," in the title, only occurs twice in its passage

through the Senate. The title is properly set forth in three different places, as it appears from the Senate Journal, in its passage through that body.

Binz v. *Weber*, 81 Ill. 268.
Larrison v. *Peoria, Atlantia and Decatur R. R.*, 77 Ill. 11.
Plummer v. *The People*, 74 Ill. 361.
Decker v. *Hughes*, 68 Ill. 33.
People v. *The Supervisors*, 16 Mich. 254.
Johnson v. *The People*, 83 Ill. 436.
The People ex rel. v. *Lowenthal*, 93 Ill. 205.

III.

The bonds and coupons in controversy were issued in pursuance of a vote of the people of the town of Walnut, held June 25, 1870, and before the Constitution of 1870 of the State of Illinois was adopted, and this vote was recited on the face of the bonds. So long as the vote was taken before the Constitution went into force, the bonds could be issued and accepted by the railway afterwards.

The Constitution of 1870 excepts from its provisions and operation "the right of any municipality to make such subscrip-" tions where the same have been authorized under existing laws, " by a vote of the people of such municipalities, prior to such " adoption."

Constitution of State of Illinois.
Fairfield v. *County of Gallatin*, 100 U. S. 48.
County of Warren v. *Marcy*, 97 U. S. 104.
Chicago and Iowa R. R. Co. v. *Pinckney*, 74 Ill. 278.
Commissioners v. *Bolles*, 94 U. S. 104, 108.
Town of Colona v. *Eaves*, 92 U. S. 484, 488.

Lynde v. *The County*, 16 Wall. 6.
Town of E. Lincoln v. *Davenport*, 94 U. S. 801.
Town of Middleport v. *The Ætna Life Ins. Co.*, 82 Ill. 562.
Lippincott v. *Town of Pana*, 92 Ill. 24.

IV.

The supervisor and town clerk were the proper persons to subscribe for the stock and execute the bonds and coupons, they being the persons designated by the act itself for that purpose and by the vote of the people, and also under the township organization act of the State of Illinois, being, *per se*, the executive officers of the town, and directly representing the people therein. They admit their signatures and that they were in fact the officers who executed the bonds and coupons.

The act is on page 16, printed record, and found in the Private Laws of Illinois of 1869, vol. 3, p. 307.

Town of Windsor v. *Hallett*, Western Jurist, Vol. 2, No. 32, page 644 (not yet reported).
Marcy v. *Town of Ohio*, 5 Legal News, 351.
Brooklyn v. *Insurance Co.*, 99 U. S. 368.
The People ex rel. v. *Holden, et al.*, 82 Ill. 93.
The Supervisor ex rel. v. *The Supervisor and Town Clerk of La Harpe*, 67 Ill. 62.

Under the township organization law of Illinois the officers of the town are one supervisor, one town clerk, one assessor, one collector and as many justices of the peace, constables and highway commissioners as are provided for by law.

Hurd's Revision of 1877, chap. 139, art. 7. p. 1014.

The act specifies only the duties of the supervisor and town clerk, and places in their hands the entire executive control and management of the affairs of the town, leaving to the other officers the duties naturally imposed upon them by virtue of their offices, and nothing more, except in the matter of auditing town charges, wherein the statute provides that the justices shall sit with the supervisor and town clerk, and with them compose the board of town auditors.

Hurd's Revision, chap. 139, arts. 11 and 12, pp. 1019, 1020.
Hurd's Revision, chap. 139, sec. 45.

V.

The instruments sued on possess all the elements of commercial paper, and being made payable to the bearer thereof, pass by delivery. The bonds from which they were detached recite upon their face the legislative act and the vote under which they were executed and delivered. The plaintiff in error, having the power to issue the bonds and coupons, and reciting that power upon the face of the bonds, is estopped from denying their validity in the hands of an innocent holder for value. The bonds need not be produced, and no demand before suing was necessary.

Town of Roberts v. *Bolles*, 101 U. S. 119, and cases thereunder.
Brooklyn v. *Ins. Co.*, 99 U. S. 362.
Aurora City v. *West*. 7 Wall. 105.
Gelpcke v. *City of Dubuque*, 1 Wall. 175.
2 Daniel Negotiable Insts., 2d ed; p. 449 and p. 468.

VI.

The coupons sued on by force of law bore 6 per cent. after their maturity. The coupons are in writing and provide for the

payment of a definite sum of money at a specified time, and are, in effect, promissory notes. Under the statute of Illinois, they bear 6 % after maturity.

Hurd's Revision of 1877, Chap. 74, § 2, p. 589.
Daniels v. *Osborn et al.*, 75 Ill. 615.
Dobbins et al. v. *Higgins et al.*, 78 Ill. 440.
Stearns v. *Sweet*, Ibid, 446.
Chapman v. *Burt*, 77 Ill. 337.
Edgmon v. *Ashelby*, 76 Ill. 162.
Case v. *Cockle*, Ibid, 484.
Harper v. *Ely*, 70 Ill. 586.
Cromwell v. *County of Sac.*, 96 U. S. 55.
Aurora City v. *West*, 7 *Wall. 104.*
Gelpcke v. *City of Dubuque*, 1 Wall. 206.
Hollingsworth v. *City of Detroit*, 3 McLean, 472.
Dunlap v. *Wiseman*, 2 Disney (Ohio), 398.
Town of Genoa v. *Woodruff et al.*, 92 U. S. 502.

The case of *Holden* v. *Trust Co.*, 100 U. S. 72, applies only to the District of Columbia, and has no significance when applied to other localities having different local laws, construed by their local courts.

VII.

The coupons sued on were payable to bearer, and passed by delivery. They required no endorsement; the bonds were endorsed, although that was not necessary

Gavin v. *Wiswell*, 83 Ill. 218.
Johnson v. *Stark County*, 24 Ill. 75.
Jones v. *Nellis*, 41 Ill. 482.
Supervisor v. *Hubbard*, 45 Ill. 143.
Town of Eagle v. *Kohn*, 84 Ill. 295.
New Hope & Delaware Bridge Co. v. *Perry*, 11 Ill. 469.
Town of Roberts v. *Bolles*, 101 U. S. 119.
Thomson v. *Lee County*, 3 Wall. 330.

VIII.

The proceedings begun in the Bureau County Circuit Court, by plaintiff in error, in November, 1872, against certain State, county and town officers, to restrain the levying and collection of taxes to pay the bonds and coupons in question, can have no force or effect as a defense to this action. Neither the railway nor the holders of the bonds and coupons were parties to that proceeding. Defendant in error had purchased the bonds and coupons more than a year previous, and even if he had been a party, with allegations in the bill to charge him, he could not have been effected under the facts relating to the issue and sale of the bonds.

Town of East Lincoln v. *Davenport*, 94 U. S. 801.
Pennoyer v. *Neff*, 95 U. S. 714.
County of Warren v. *Marcy*, 97 U. S. 105.
Brooklyn v. *Insurance Company*, 99 U. S. 370.
County of Cass v. *Gillett*, 99 U. S. 585.
Dunnovan v. *Green*, 57 Ill. 63.
Township of Empire v. *Darlington*, 101 U. S. 87.
United States v. *Council of Keokuk*, 6 Wall. 514.
Riggs v. *Johnson County*, 6 Wall. 166.
Weber v. *Lee County*, Ibid, 210.
Supervisors Lee County v. *United States*, 7 Wall. 174.
Collier on Corporations, *385*.
Dillon on Corporations, *Vol. 2*, *Sec. 643*.

IX.

Any pretended election held by plaintiff in error, August 21, 1869, for the purpose of voting aid to this railway, alluded to in the bill of exceptions, could not operate to invalidate the bonds issued under the vote of June 25, 1870.

The court did not find, from the evidence, that any such election was ever held. Even if it had it would be no defense. The act of the Legislature provided that it was optional with the rail-

way whether it would accept the conditions of any particular vote, and the powers of the act could not have been exhausted until the people had voted aid on terms and conditions *acceptable* to the railway, even if they had called and voted at repeated elections. The railway only accepted bonds voted for June 25, 1870, and August 6, 1870.

See act page 16, printed record and special finding.

The defendant in error was not bound to look beyond the act of the Legislature and the recitals on the face of the bonds.

County of Warren v. *Marcy*, 97 U. S. 104.
Commissioners v. *Bolles*, 94 U. S. 104.
Township of Empire v. *Darlington*, 101, U. S. 87.
Town of Colona v. *Eaves*, 92 U. S. 484.
Marcy v. *Township of Oswego*, Ibid, 638.

X.

The equitable view of this case is that the inhabitants of plaintiff in error secured what they mostly desired, to wit: a railway through their town, with a depot on the spot selected by the people, built in accordance with the terms and conditions imposed by the vote of the people, quick transit for persons and the products of their farms to the greatest mart in the world, greatly enhancing the value of their property, and all through the instrumentality of this railroad, built in part by the very money arising out of the sale of these lands.

Common honesty demands that the town should pay the bonds.

See special finding.

Commissioners v. *Bolles*, 94 U. S. 110.
The People et al. v. *Holden et al.* 82 Ill. 103.

ARGUMENT.

May it please the Court:

No assignment of errors has been furnished me, and I rely wholly upon points made by plaintiff in error at the trial below, as to the questions of law to be discussed in this court.

Substantially the same questions are involved in case number 259 of the present calendar—*The Town of Ohio* v. *Frank*—and in so far as the issues are identical, they may be treated together.

Questions touching the validity or invalidity of municipal bonds, issued in aid of railroads and other *quasi* public improvements, have been so frequently before this court that probably very few remain to be settled. In the case at bar, we feel assured that every issue of law is well established and that the judgment of the Circuit Court should be affirmed.

When the defendant in error introduced, at the trial, the act of the Legislature giving authority to the town of Walnut to subscribe to the capital stock of the Illinois Grand Trunk Railway, and issue its bonds in payment therefor; also evidence to show the subscription of the town, the execution of the bonds and coupons, the coupons sued on with one of the bonds from which they were cut, as a sample of all the bonds, reciting on the face thereof that the bonds and coupons were issued to the Illinois Grand Trunk Railway, in pursuance of the act of the Legislature before mentioned, in force March 25, 1869, the charter of the company, and other laws, and in pursuance of a vote of the electors of the town, taken June 25, 1870; also the deposition of defendant in error that he purchased the bonds and coupons before the first interest coupons became due, and for nearly their face value, and with no notice of any defense to them; together with evidence showing endorsements on the bonds, their sale and delivery and receipt of the stock subscribed for, he made out a case which could only be overcome by showing a want of power to issue the bonds.

This question of power, with other issues of fact, was submitted to the court and the finding was in favor of the validity of the bonds.

1.

THIS COURT WILL NOT GO BEHIND THE FINDING OF THE COURT BELOW, NOR INSPECT THE RECORD.

In my view of the case the plaintiff in error is limited to the sole question whether the finding of the court below is sufficient to sustain the bonds. This court has uniformly ruled that the findings of the lower court must be conclusive, and will only inquire whether, under such findings, there is warrant of law for the judgment. The whole testimony cannot be brought up for review by bill of exceptions, and if, in this case, the facts, as found by the court, are sufficient to sustain the judgment, it will stand.

This practice is so well settled that we do not quote from the authorities.

2.

THE ACT OF MARCH 25, 1869, WAS DULY AND CONSTITUTIONALLY PASSED.

The act under which the instruments in controversy were issued was duly and constitutionally passed, and the court so found.

The bill was introduced in the Lower House of the Legislature of Illinois at its session of 1869, and received the number "231." During its passage through both branches of the Legislature it was designated as "House Bill No. 231." The only discrepancy to be pointed out is that in its passage through the Senate the word "Illinois," in the title, is three times omitted. But the court will observe that the designation "House Bill No. 231" is always preserved, and in three places in its passage through the Senate the word "Illinois" is preserved in the title,

so that the identity of the bill cannot be doubted. Whether it did or did not pass the Senate, and thereby become a valid law, is one of fact, and that fact being found by the Circuit Court, this court will not go behind that finding and inspect the record itself.

But should this court inspect the record, it will find, under the rulings, that the bill passed in a constitutional manner and became a valid law.

The Journals of both Houses show that "House Bill No. 231" was regularly passed on the call of "ayes" and "nays," properly engrossed in both Houses by its full title, signed by the Speakers of the two Houses, and approved by the Governor, under the same title of "House Bill No. 231."

Relieved of constitutional requirements, legislative acts need no title whatever.

Chief Justice HOLT, in *Wills* v. *Wilkins*, 6 Mod. 62, said:

"It is true that the title to an act of parliament is no part of "the law or enacting part, no more than the title of a book is part "of the book; for the title is not the law."

In Potter's *Dwarris on Statutes*, *102*, it is said: "The title "of a statute, it has been repeatedly held, is no part or parcel of "the statute, and is generally framed by the clerk of that House "in which the bill first passes." And so in *Sedgewick*, on the construction of statutory and constitutional law (2d ed.) 38, and in *Barrington on Stat. 449*.

The Constitution of 1848, under which the act in controversy was passed, only modified the common law doctrine to the extent of providing that "no private or local law which may be passed "by the General Assembly shall embrace more than one subject, "and that shall be expressed in the title."

Const. of 1848, Art. 3, Sec. 23.

The Constitution of 1870 extends to *all* acts, and it is to the latter that the Supreme Court of Illinois refers in the case of *Plummer* v. *The People*, 74 Ill. 361.

But the act in controversy is made a public act by its terms in Sec. 3, and does not come under any constitutional restriction, which would be a sufficient argument if none other existed.

But the mere preservation of the title to a bill, in every word, in its passage through the Legislature, is not held by the courts to be a necessity. The sole object of constitutional provisions requiring bills to contain titles is to guard against undue legislation, and to identify the act.

In *Larrison et al.* v. *The Peoria, Atlanta & Decatur R. R. Co. et al.*, 77 Ill. 11, it appears that by some clerical error the bill was introduced into the Senate as "Senate Bill No. 453, for an act "to incorporate the Peoria, Atlanta and *Danville* Railroad Com- "pany," thus changing the name of Decatur, in the title, to Danville; but as the bill preserved its identity by holding its number, "453," the Supreme Court of Illinois held that the act was constitutionally passed, and uses the following language:

"And the question is, was the bill for the act read three times "in the Senate before its passage by that body? If the entries on "the journal refer to the same bill, then the requirements of the "organic law are satisfied. The question is one of identity. Do "these entries show there was one or two bills acted upon by the "Senate? The number is the same throughout. About that "there is not the pretense of the slightest doubt, and it is manifest "that to have more than one bill pending at the same time, with "the same number, would lead to confusion; it would defeat the "very object of numbering bills, which is to preserve their iden- "tity and prevent confusion."

* * * * * *

"The Constitution does not require bills to be entitled, but "that is done as a means of identification. If a bill were intro-

" duced without a title, and regularly passed, and the title then " adopted, we are unable to see that there would be any constitu- " tional objection to such a law for that reason."

In *Binz* v. *Weber*, 81 Ill. 290, the Supreme Court of Illinois modify their opinion as expressed in *Larrison* v. *Peoria, Atlanta and Decatur R. R. Co.*, in so far as a title to a bill being essential, but in *Binz* v. *Weber* the court had in mind the Constitution of 1870, and not that of 1848, and it reaffirms the doctrine in the *Larrison* v. *Peoria, Atlanta and Decatur R. R. Co.* case in this, that the title, even if necessary, need not be literally preserved in the passage of the bill through the Legislature, it being merely for purposes of identification, and a clerical error is not fatal.

The point is conclusively settled by the Supreme Court of Illinois in *Plumer* v. *The People*, 74 Ill. 362, in which the court passes upon the constitutionality of a bill, the title to which was, in its passage through the House of Representatives, " a bill for an act to prevent the keeping of common gaming-houses," and in its passage through the Senate it bore the title of " a bill for an act to prevent the keeping of common gaming-houses, *and to prevent gaming.*"

This act was passed under the more stringent provisions of the Constitution of 1870, and was held valid—it having preserved its original number, " House Bill No. 769."

In *Johnson* v. *The People*, 83 Ill. 436, the Supreme Court of Illinois says:

" The provisions of the Constitution (1870) does not require " that the subject of the bill shall be specifically and exactly " expressed in the title, hence we conclude that any expression in " the title which calls attention to the subject of the bill, although " in general terms, is all that is required." And reaffirms this ruling in *The People ex rel.* v. *Lœwenthal et al.*, 93 Ill. 205.

These cases are to be taken strongly against plaintiff in error, because the points raised were—not to the title as such, but as to the subject matter of the titles—not to the names of the bills, but to their character.

The attention of the court is respectfully directed to the certificate of the Secretary of State, attached to the certified copy of the act introduced in evidence by the plaintiff in error, and shown upon pages 25 and 26 of the printed record, in which that officer (unwittingly as we assume) is made to certify that no such act as the one in controversy, ever passed the Senate of Illinois.

By this certificate the Secretary of State is made to perform an extra official duty as well as to stultify the body of the copy of the House and Senate journals, to which he certifies. As the custodian of the public documents of the State of Illinois, the Secretaty of State is requested by law to furnish, on application, certified copies of any documents in his possession, and when he has made the copy, and certified that it is a true transcript of the original in his office, he has done his duty, and no assertion by that officer, in his certificate, that he is "unable to find any evidence of the passage in said Senate of an act under the title of an act to amend an act entitled 'An act to incorporate The Illinois Grand Trunk Railway,'" when he had just shown in the body of the paper, he is certifying that such a bill *did* pass the Senate, will change either the fact or the law.

For the purpose of showing the court that possibly the Secretary of State did not intend to append such a certificate, or that he attached his name and seal of State to the same, without knowledge of the purport of this certificate, and also for the purpose of showing to what length plaintiff in error has elected to go in order to avoid its financial obligations, I have introduced into the record a copy of the House and Senate Journals relating to the passage of this same act, certified to by the same Secretary of State. That part relating to its passage through the Senate, together with the certificate of the Secretary of State, is found on pages 29, 30 and 31 of the printed record, and I respectfully call the courts' attention to the same, for the reason that in other respects than in the certificate, it differs from the copy introduced by the plaintiff in error, to wit: the copy introduced by the plaintiff in error does not

show the message from the House to the Senate announcing the concurrence by the House in the amendments made by the Senate. Nor does the certificate to the copy introduced by the plaintiff in error, pretend to set forth that that copy was made from the *original* journals, which leads me to conjecture that that copy was made from the journals as they were afterwards printed.

3.

THE BONDS WERE VOTED FOR BEFORE THE ADOPTION OF THE CONSTITUTION OF 1870.

At the trial of this cause, plaintiff in error took the ground, that notwithstanding the electors of the town of Walnut voted to issue the bonds, from which the coupons sued on were detached, on June 25, 1870, yet that the railway did not accept the bonds until August 3, 1870, or after the Constitution of 1870 was voted upon by the people, and which became a bar to the railway accepting the bonds, and introduced a letter from a part of the directors of the railway company to sustain the point, a copy of which letter is found on page 20 of the printed record.

There would seem to be no force in the point.

The Constitution of Illinois, which was voted upon July 2, 1870, contains a section prohibiting municipalities from subscribing to capital stock of railways or other private corporations, and from donating aid to the same; but the article contained the following proviso:

"That the adoption of this article shall not be construed as "affecting the right of any such municipality to make such sub-"scriptions, where the same have been authorized under existing "laws, by a vote of the people of such municipalities, prior to "such adoption."

The court will observe that the sole condition attached to the proviso is, that the subscription shall be "*authorized under existing laws, by a vote of the people of such municipalities, prior to such adoption.*"

Nothing is said about any acceptation of the votes or bonds to be issued thereunder. Even if the court could go beyond the provisions of the Constitution and extend the language of the article, which is limited to the vote, to also include an acceptance of the vote by the railway, then we submit that the letter offered to sustain the point is wholly insufficient, and the circuit judge so viewed it.

The only signification that could possibly be given this letter is, that it is signed by three persons styling themselves directors, acting in their individual capacity, without authority of the company, and not construable into an official act of the company.

But the point need not be discussed, because the rights of the parties to this suit are fixed by decisions of this court and the Supreme Court of Illinois.

In *The Chicago and Iowa Railroad Co. et al.* v. *Daniel F. Pinckney et al.* 74 Ill. 278, the Supreme Court, after reciting the clause of the Constitution of 1870, relating to municipal aids to corporations, continues:

"The election in the town of Mount Morris, by which the "voters of that town decided to donate $75,000 to the Chicago "and Iowa Railroad Company, occurred on the 30th day of June, "1870. The Constitution was adopted on the 2d day of July fol- "lowing. At the time the section of the Constitution referred to "was framed, large sums of money in different parts of the State "had been voted by municipalities to be subscribed and donated to "railroad companies, on condition that railroads then being con- "structed should be completed within a given time, and the country, "whether wisely and judiciously or not, seemed to demand that in "cases where the people in these municipalities had, under existing "legislation, voted to aid railroads, by subscription or donation, "prior to the adoption of the Constitution that made such subscrip- "tion or donation, should not be affected by the formation of the "Constitution."

The same doctrine is held by the Supreme Court of Illinois in *Town of Middleport* v. *The Ætna Life Insurance Co.* 82 Ill. 562; *Lippincott* v. *The Town of Pana*, 92 Ill. 24.

The court in *Hanfield* v. *County of Gallatin*, 100 U. S. 51, after citing the Illinois authorities, says: "It thus appears to "have become a rule of property in the State that municipal bonds, "issued to railroad companies on account of donations voted by "the people before the adoption of the Constitution, are valid, "though not issued until after the adoption."

In the case at bar the vote was taken on June 25, 1870, five days before the election in Mount Morris passed upon in the *Chicago and Iowa Railroad Co.* v. *Pinckney case*, and eight days before the Constitution of 1870 was voted upon by the people of Illinois.

4.

THE BONDS AND COUPONS WERE EXECUTED BY THE PROPER AUTHORITIES.

The act under which these bonds were executed and delivered provides that "if a majority of said votes shall be for subscrip- "tion, the corporate authorities of said city, town or township, and "*the supervisor and town clerk of said township* so voting, shall "cause said subscription to be made; and upon its acceptance by "the directors of said company, shall cause bonds to be issued in "conformity with said vote."

This act might have been made so clear that a doubt could not have arisen in any mind, but as it is, the words "*and the supervi-* "*sor and town clerk of said township* so voting shall cause said "subscription to be made, and upon its acceptance by the company "shall cause bonds to be issued in conformity with said vote," cannot but have given authority to the supervisor and town clerk of plaintiff in error to execute the bonds in controversy, and that the same are legally executed.

The offices of "supervisor" and "town clerk" were not created in Illinois until 1851, when the Legislature of that State, under the Constitution of 1848, Art. vii., § 6, provided for township organization.

Session Laws of 1849, p. 35.

Before that time townships had no municipal organization and no township officers, except school officers, and were under the jurisdiction of the county commissioners' court.

Rev. Stat. 1845, p. 130.

That is to say, townships in Illinois, except in counties where township organization has been adopted, have remained, politically, precisely where the ordinance of the Continental Congress of May 7, 1784, placed them, to wit: mere subdivisions of land, of six sections or thirty-six square miles each, established for convenience in making United States surveys.

When township organization was adopted in Bureau County where plaintiff in error is located, the offices of "supervior" and "town clerk" were created for plaintiff in error, the supervisor becoming the chief executive officer of the town, and the corporate name becoming "The Town of Walnut."

Rev. Stat. 1877, p. 1011, § 38.
Same, page 1019, Art. 11.

For all purposes of surveys, conveyancing, etc., it will be observed, the designation of "township" is still preserved, and the words town and township are synonymous when applied to the geographical division heretofore designated.

Therefore, running through the laws of Illinois—public and private—the words are interchangeable, and usually when the word town is used, an incorporated village or city, having a board of trustees or a common council, is the character of the municipality referred to.

The court will have observed that when the plaintiff in error issued its bonds, it did so by the name and style of "Walnut Township," as appears on page 2 of the printed record.

When the act in question passed the Legislature, it was reasonable to suppose that the railroad might pass through cities, incorporated villages or towns, townships under, and townships not under township organization. If through townships, like plaintiff, under township organization, then the "supervisor" and "town clerk" should issue the bonds. If through townships not under township organization, or villages or cities, then that their corporate authorities (whoever they might be), should issue the bonds.

That the bonds and coupons in controversy were properly executed and issued, have been both directly and indirectly passed upon by the courts.

In *Marcy* v. *The Town of Ohio*, 5 Legal News, 351, his Honor, Judge DRUMMOND, of the Northern District of Illinois, held the bonds to be properly executed, and that case was affirmed by this court in *The Town of Ohio* v. *Marcy*, 18 Wall. 552.

In *Brooklyn* v. *Insurance Co.*, 99 U. S. 368, under a similar act the supervisor and town clerk issued bonds, and this court held them valid and properly executed.

In *The People, ex rel.* v. *Holden et al.*, 82 Ill. 94, the action was *mandamus* against the supervisor and town clerk of the town of Danville to issue bonds to the Paris and Danville Railroad Company, under the act of March 26, 1869, found in third volume of Private Laws 1869, pages 147, 148. The language of that act is: "Elections may be held in any county, township, city or incorporated town," to vote for stock (*Sec. 9, p. 147*), "and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city or town," etc., an election shall be called.

"And if a majority of the votes cast at such election by voters voting on that subject shall be 'for subscription,' it shall be the

" duty of the county court, or board of supervisors, of every such " county, *the supervisor and clerk of such township*, and the cor- " porate authorities of such city or town, to subscribe for stock " and issue bonds," etc. (*Sec. 10, pp. 147–8, 3d Vol. Sess. Laws of 1869.*)

In construing this act, the Supreme Court of Illinois, in the case cited, held that the supervisor and town clerk were the proper officers to issue the bonds of the town, and so ordered. Under the act the Supreme Court use the terms " township authorities " and " supervisor and town clerk " as synonomous.

Compare also the case of *The People ex rel.* v. *The Supervisor and Town Clerk of La Harpe*, 67 Ill. 62.

In *The Town of Windsor* v. *Hallett*, not yet reported, but of which an abstract may be found in the Weekly Jurist, Vol. 2. No. 32, page 644, the Supreme Court of Illinois say :

" Under a law which authorizes the 'proper corporate authori- " ties' of a township to issue the bonds of the town, when so au- " thorized by a vote of the electors at an election called for that " purpose, the supervisor and town clerk must be regarded as the " proper corporate authorities for the issue and delivery of the " bonds, it being but a ministerial act, though they are not such, for " the purpose of creating the indebtedness. There is a broad dif- " ference between the creation of a debt and merely executing the " evidence of it."

If this court shall be satisfied, from the argument and authorities cited, that—

1st. There was competent legislative authority for the issue of the bonds in controversy,

2d. That the vote of the electors of plaintiff in error was had authorizing the issue of the bonds, before any constitutional intervention, and

3d. That the bonds were in fact executed and delivered by the proper town authorities provided for in the act itself, and that this power and authority appears on the face of the bonds, then, in

the hands of defendant in error, an innocent purchaser, in good faith, for value, and with no notice of any defense to the same, the bonds sued on cannot be successfully attacked.

But minor questions have arisen in this case which we will notice in brief.

5.

THE COUPONS REQUIRED NO ENDORSEMENT, BEING PAYABLE TO "BEARER," AND NO DEMAND WAS NECESSARY.

Plaintiff in error claims that the instruments sued on should have been endorsed. I find no law requiring any such endorsement. They possess all the elements of commercial paper and pass by delivery. The bonds from which they were cut were payable to the railway, or bearer, and were duly endorsed by the railway. The coupons sued on were simply payable to "bearer." Even if the bonds had not been endorsed by the railway, still they would have been valid in the hands of an innocent purchaser, and the town would be estopped from denying their validity. This is clearly set forth in the opinion of this court in *Town of Roberts* v. *Bolles*, 101 U. S. 119, and *Brooklyn* v. *Ins. Co.*, 99 U. S. 362. The views of this court in those cases have been so recently expressed that we will not quote from them. No demand was necessary.

It is an elementary principle of law that the commencement of a suit, without demand, is proper, and that a demand as a condition precedent, is wholly unnecessary. In the case at bar, a demand would have been futile. The town, by its own showing at the trial, had instituted proceedings in chancery in its local courts, and obtained an injunction restraining its officers from levying and collecting taxes and paying these coupons. What force is there in an argument on the part of plaintiff in error that we did not make a demand on the supervisor, when that officer did not have a cent with which to pay, and years before had caused an injunction to be issued against him to restrain him and other officers of the town, from making any preparations to pay these coupons?

6.

THE COUPONS BORE 6 PER CENT. INTEREST AFTER MATURITY.

Plaintiff in error denies the right of the defendant in error to recover interest on the coupons at 6 per cent. per annum, after maturity. I had supposed that this was not an open question. The coupons are in writing and provide for the payment of a definite sum of money, at a specified time. Under the statutes of Illinois they bear 6 per cent. interest, after maturity.

"Creditors shall be allowed to receive, at the rate of 6 per "centum per annum, for all moneys after they become due on any "bond, bill, promissory note, or other instrument in writing."

Hurd's Revision of 1877, Chap. 74, § 2, page 589.

In *Harper et al.* v. *Ely et al.*, 70 Ill., 586, one of the questions involved was the right to collect interest upon interest coupons after their maturity, and the court says: "The coupons provide for "the payment of a definite sum of money at a specified time. "They are in writing, and in effect are promissory notes, and we "are aware of no reason why interest should not be computed "upon them after they became due," and cites *Gelpcke* v. *City of Dubuque*, 1 Wall., 206, in which this court uses the following language: "Bonds and coupons, like these, by universal commercial "usage and consent, have all the qualities of commercial paper. "If the plaintiffs recover in this case they will be entitled to the "amount specified in the coupons, with interest and exchange as "claimed."

The question has repeatedly been before this court, and the uniform rulings have been that coupons attached to bonds, after maturity of the coupons, bear the same rate of interest as provided for by statute, for money due, where such coupons are executed. Among the later of these cases is *Cromwell* v. *County of Sac*, 96 U. S., 55, a case which went up from Iowa, where the interest laws are like those of Illinois, 6 per cent. on money due by express contract, and as high as 10 per cent. by agreement of parties, and the court says: "With reference to interest on the coupons after their

" maturity, that can be allowed only at the rate of six per cent. " under the law of Iowa."

The same principle was announced in *Aurora City* v. *West*, 7 Wall., 105, and the court held it was not necessary to produce the bonds from which the coupons were cut, the coupons themselves having all the characteristics of commercial paper.

The case of *Holden* v. *Trust Company*, 100 U. S. 72, cannot be made to apply to this case. The question arose under the laws of the District of Columbia, and the court takes especial care to limit its rulings to that case as being controlled by the local law of the district of Columbia, and reaffirms the general doctrine as laid down in *Cromwell* v. *County of Sac.*

Counsel for plaintiff in error may cite rulings of the Supreme Court of Illinois, where that body has sought to draw a distinction between municipal obligations and the obligations of other citizens. Such are not the rulings of this court, and for commercial purposes municipal bonds and coupons are treated precisely as all other commercial paper.

7.

THE INSTRUMENTS SUED ON PASSED BY DELIVERY.

The Supreme Court of Illinois in *Town of Eagle* v. *Kohn et al.* 84 Ill. 295, in which the question of coupons attached to railroad aid bonds passing by delivery arose, says: " It is the well settled doctrine " that bonds of this character are to be treated as commercial " paper, and this court has held the coupons attached to them to " be negotiable by delivery only without endorsement." At the last term of this court, the same principle was announced in *Town of Roberts* v. *Bolles*, 101 U. S. 119. In that case the bonds were made payable to the railroad company, *or bearer*, and the court held that the bonds passed by delivery, without the endorsement of the railroad company, and that the *holder* could sue on them, citing the Illinois statute and decisions in support of its ruling.

The instruments sued on in this case came wholly under the rulings in *Town of Eagle* v. *Kohn*, *supra*.

8.

SUIT IN BUREAU COUNTY NOT A BAR.

The plaintiff in error, in order to preclude a recovery upon the coupons sued on, exhibited in evidence a transcript of some proceedings had in the Circuit Court of Bureau County, Illinois, in the latter part of 1872, brought by the plaintiff in error, in the chancery side of the court, against certain county and town officials, to restrain them from levying and collecting taxes to pay the coupons of plaintiff in error, of which those sued on are a portion.

To this suit neither the defendant in error, who had bought the bonds and coupons more than a year before, and who had collected at least one annual instalment of interest, nor the railway, were made parties.

The transcript was admitted in evidence, but the court below did not find that the facts disclosed by the record were true. This, however, would not have assisted the plaintiff in error. It was shown conclusively at the trial that the holder of the bonds was not a party to that suit, and could not be bound by it, and also, that if he had been, he could not have been effected, because the bill did not show any cause of action against him, nor anything whereby the validity of the bonds could be impeached.

Bills in chancery and injunctions issued out of local courts against municipal officers to restrain the levying and collection of taxes to pay municipal bonds and coupons, are only limited by the number of such municipalities having bonded indebtedness, and which seek to repudiate the same. But such proceedings are wholly unavailing in the courts, when innocent purchasers of such bonds seek their collection, showing that they purchased in good faith, for valuable consideration, and with no notice of defenses beyond looking to the power of the municipality to issue the bonds

The same defense was set out in *Brooklyn* v. *Insurance Co.*, 99 U. S. 370, also in *Township of Empire* v. *Darlington*, 101 U. S. 87; *County of Warren* v. *Marcy*, 97 U. S. 105, and numerous other cases referred to in the brief.

The court say, in *Empire* v. *Darlington:*

" It is scarcely necessary to say that the decree of the Circuit " Court of McLean County, Illinois, rendered in 1878, perpetually " enjoining the assessment and collection of taxes for the purpose " of paying the bonds and coupons in question, and declaring said " bonds and coupons to be void, did not conclude the rights of " defendant in error."

" The defendant in error was not served with process, nor did " he appear. If the decree was binding upon the citizens and " courts of Illinois, as to which we express no opinion, it was inef- " fectual as to bondholders residing in other States, who were pro- " ceeded against only by constructive service."

In that case bondholders were in fact made parties as " unknown owners and holders," and brought into the suit by constructive service—that is to say, by publication.

In the case at bar, neither the owners of the bonds nor the railway, were even made parties to the suit. The suit was instituted by the town against its own officers, and no pretense is made that any inquiry was had into the validity or invalidity of the bonds.

9.

ESTOPPEL IN PAIS.

As I have before argued, the instruments in controversy having been issued under competent legislative authority; a vote of the electors had before any constitutional impediment intervened; and executed by the proper officers, all of which is shown by the recitals on the face of the bonds, no defense can be successfully made against defendant in error as an innocent purchaser for value, and the plaintiff in error cannot set up any acts or omissions by it as *ultra vires* to defeat this action

The bill of exceptions discloses the fact that evidence was introduced by plaintiff in error tending to show that an election had been held in 1869 for the purpose of voting on a proposition to

subscribe for stock in the Illinois Grand Trunk Railway, upon certain terms and conditions specified. The evidence was of such a character that the court, in its finding, is silent as to whether or not it considered any election was ever held in 1869, by the electors of plaintiff in error, and even if it had so found, that fact would not invalidate the bonds. There is no law making the acts of a town or township, in the State of Illinois, matter of public notoriety, of which all the world must take notice. Conceding that such an election was held, which was not found by the court, I contend that our bonds are not thereby rendered invalid; *first*, because by referring to the act of the Legislature we find that the town had ample power to continue to vote to subscribe to the stock of this railway, and issue its bonds in payment therefor, until it did so to the satisfaction of the railway, be that never so many times; and *second*, under the rulings of this court the fact of a preceding vote, or any other extrinsic fact, cannot effect this defendant in error as an innocent holder of the bonds.

The act provides "that any city, incorporated town, or township which may be situated on or near the route of the Illinois "Grand Trunk Railway, west of the city of Mendota, *via* Prophetstown to the Mississippi river, may become subscribers to the stock "of said railway, and may issue bonds for the amount of such "stock so subscribed, with coupons for interest thereto attached, "under such limitations and restrictions and on such conditions as "they may choose *and the directors of said company may approve.*"

It is not pretended that the railway ever approved of any vote of 1869, even if any such was ever had, and no bonds ever issued under such vote, if one was in fact had.

There is no word or clause in the act indicating that the authority of the township to make subscriptions and issue bonds ceased after one vote was taken upon that subject. Plenary power was given the township to vote, by the terms of the act, until such terms and conditions were agreed upon by the people as the *directors of the railway should approve.*

Still we can rely upon the rulings of this court upon the question as appear in *County of Warren* v. *Marcy*, 97 U. S. 104; *Commissioner* v. *Bolles*, 94 U. S. 104; *Township of Empire* v. *Darlington*, 101 U. S. 87, and other decisions, holding that if the recitals show legislative authority, and executed by the proper officers, accompanied by a recital that the necessary preliminary vote had been given by the electors as an endorsement of the issue of the bonds, the municipality cannot be permitted to plead extrinsic matter in avoidance of its obligation.

The recitals in the bonds issued by the town of Walnut are identical with the recitals in the bonds passed upon by this court in the cases of *Town of Colona* v. *Eaves*, 92 U. S. 484, and *Marcy* v. *Township of Oswego*, Ibid, 638, wherein the court decided that the recitals operated as an estoppel *in pais*, and that the question could not be considered an open one in this court.

There being legislative authority, and the vote of the electors required by the act, and the bonds having been executed by the officers of the town designated by the act, it was for those officers of the town, as the agents thereof, to determine whether or not all steps in the process of execution of the power granted to issue the bonds, had been complied with, and by their recitals in the bonds they have so decided, and the town is estopped from denying the facts.

10.

EQUITABLE ESTOPPEL.

The case at bar presents a potent equitable feature. In order to induce the building of a railway through the territory of plaintiff in error, its inhabitants, under a law especially enacted for that purpose, voted to subscribe for a certain amount of stock in the railway and issue its bonds in payment therefor. The stock was subscribed for and delivered to the town, which in turn issued it bonds to the railway, and by the railway sold in the market, in

order to realize funds with which to build the road. With money thus obtained the road is built, the property of the town greatly enhanced in value, and having thus obtained all it bargained for and desired, this same town now seeks to avoid its just obligations, not upon any meritorious grounds, but upon supposed technical irregularities, which this court has never sanctioned.

As was said by the Supreme Court of Illinois in *The People ex rel.* v. *Holden et al.*, 82 Ill. 103, "The town obtained all it ex- "pected to obtain, and ought to pay what it agreed to pay," and by this court in *Commissioners* v. *Bolles*. 94 U. S. 110, "Common honesty demands that a debt thus incurred should be paid."

THOMAS S. McCLELLAND,

Of Counsel for Defendant in Error.

GEORGE A. SANDERS,

Attorney for J. H. Wade.

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IN THE

Supreme Court of the United States,

(No. 258.)

OCTOBER TERM, A. D. 1880.

THE TOWN OF WALNUT,
Plaintiff in Error,

vs.

J. H. WADE,
Defendant in Error.

Error to the Circuit Court of the United States, Northern District of Illinois.

REPLY OF DEFENDANT IN ERROR, TO THE ARGUMENT OF W. C. GOUDY, COUNSEL FOR PLAINTIFF IN ERROR.

THOMAS S. McCLELLAND,

Counsel for Defendant in Error.

CHICAGO:

HORACE O'DONOGHUE, LEGAL PRINTER, 42 BRYAN BLOCK, 170 LA SALLE STREET.

1881.

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1881.

Reply of Defendant in Error.

MAY IT PLEASE THE COURT:

I have just been furnished, through the clerk of this court, with a copy of an argument filed herein on March 14, 1881, by Mr. W. C. Goudy, for the plaintiff in error, which is the first intimation I had had that other counsel had appeared in the case or had filed arguments.

At the time I filed my original brief in this cause, I had not been furnished with any brief by plaintiff in error, nor even its assignments of error, although I had requested it, and in preparing my brief I relied wholly upon points raised during the progress of the trial in the court below, as to questions to be discussed.

While I have already covered all the questions involved in this case, I beg permission of the court to file this reply, in order more particularly to direct the attention of the court to some apparent errors made by counsel, providing I am not too late, under the rules of court, and also to review some of the authorities cited, to show that they are not applicable to the points in issue.

In order to show that the town of Walnut had no *power* to issue the bonds and coupons in question (counsel denominate these coupons "*interest orders*" and "*town orders*," as if by so doing they could change their real character and gain some advantage thereby), the act of the Illinois Legislature, under which the bonds were issued, is attacked.

Counsel cites section 21, article 3, Constitution of 1848. That section relates to the final passage of bills by ayes and noes, and that they be entered on the journals of the respective houses and concurred in by a majority of all the members elect in each house. Inasmuch as the record shows that all these conditions were complied with,

and no argument being made that they were not, I conclude that it is not pretended that there was any violation of the fundamental law in this regard.

But section 23 of the same article is cited and commented upon; or, rather, that portion of the section which provides that "no private or local law which may be "passed by the General Assembly shall embrace more "than one subject, and that shall be expressed in the "title," so seriously by the author of the argument, that he has evidently supposed that the act of March 25, 1869, under which these bonds and coupons were issued, is really obnoxious to that clause.

Without going further into the argument, I respectfully ask the court to examine the authorities cited by me in my brief for conclusive authority, by the Supreme Court of Illinois, that the omission of the word "*Illinois*," from the title of the act, in some of the places during its passage through the Senate, does not in any manner affect the law.

The case of *Johnson* v. *The People*, 83 Ill. 431, relied on by counsel to sustain his views, is an authority I had already cited; and had counsel turned over the leaf and read page 436, he would have found the court's interpretation of the constitutional provision quoted; and had he gone further and examined the cases of *Plummer* v. *The People*, 74 Ill. 362, and *The People* v. *Loewenthal et al.* 93 Ill. 205; *Decker* v. *Hughes*, 68 Ill. 33; *Larrison et al.* v. *The Peoria, Atlanta and Decatur R. R. Co.* 77 Ill. 11, and other authorities on the subject, he would have found far graver objections to acts which were passed upon by the courts in Illinois and elsewhere, and which were held constitutional, than the mere omission of the word "*Illinois*," from the act in question, in three out of seven places in its passage through the Senate.

The act passed upon by this court in *Ottawa* v. *Perkins*, 94 U. S. 260, is not in point. The ground of objection in that case was that the act was not voted on in the Senate *at all*, a very different case from the one at bar.

But, says counsel: *The title does not express the subject of the bill, and so is in conflict with the Constitution and void;* and cites that clause of section 23, article 3, of Constitution of 1848, which I have above quoted, and also some authorities.

As early as 1862, if not earlier, the Supreme Court of Illinois passed upon this question. In 1851 the Legislature of Illinois passed an act entitled "An act to incorporate the Northwestern University," having for its object the establishment and endowment of an educational institution.

In 1855 the Legislature passed an act entitled "An act to amend an act entitled 'An act to incorporate the Northwestern University.'"

By this latter act it was made a penal offense to sell liquor within four miles of the location of the university.

One John O'Leary, engaged in selling liquor within the prescribed limits, and the county of Cook being the proper prosecutor, began its action against O'Leary under the amended act. O'Leary set up the clause of the Constitution herein invoked, and relied upon it as a defense. The cause went to the Supreme Court of the State, and the enactment was held valid and not obnoxious to the Constitution. The court says:

"The only question presented in this case is, the "constitutionality of the law under which the prisoner "was convicted. The law is entitled, 'An Act to "to amend an act entitled 'An Act to incorporate the "Northwestern University.'' This amendatory act pro-"hibits the sale of spirituous liquors within four miles of "the university, under a special penalty, to be recovered "by the county of Cook. It is insisted that the provision "is within the inhibition of the Constitution, which de-

" clares that 'no private or local law shall embrace " more than one subject, and that shall be expressed in " the title.' That this is a private and a local law there is " no question. Does it embrace more than one subject? " is the question. This clause is to be treated precisely as if " it were found in the original charter to which this law is " an amendment.

" The object of the charter was to create an institu- " tion for the education of young men, and it was compe- " tent for the Legislature to embrace within it everything " which was designed to facilitate that object. Every pro- " vision which was intended to promote the well-being of " the institution, or its students, was within the proper " subject-matter of that law. We cannot doubt that such " was the single design of this law. Its purpose was to " keep far away from the members of the institution the " temptation to intemperance and its attendant vices. Al- " though this provision might incidentally tend to protect " others, residing in the vicinity, from the corrupting and " demoralizing influences of the grog-shop, yet that was " not the primary object of the law, but its sole purpose " was to protect the students and faculty from such influ- " ence. It was designed for the benefit and well-being of " the institution, and this is the touchstone of the consti- " tutionality of the enactment. If its design was foreign " from the subject of the law, which was the creation of, " and to provide for the well-being of an institution of " learning; if the design was to protect the community " generally, from the bad influences of a particular tempta- " tion, without a particular reference to the institution, " then it might be said with much propriety, that it was " foreign and not germane to the subject of the law. It is " not a valid objection that the prohibition designed for the " benefit of the institution, is guaranteed by a public pen- " alty, or, as in this case, one going to the county. It was " competent to select any mode of enforcing the prohibi- " tion, which might be thought the most efficacious. Sup-

" pose, in the charter of a gas company, a prohibition " against digging up and destroying the pipes were " enforced by indictment and imprisonment; or, as is often " the case in railroad charters, a provision is inserted, " making it indictable to tear up or injure the track, would " it be said that such clause is unconstitutional, as not ger- " mane to the subject of the law, because the sanction of " the prohibition is a prosecution in the name of the " people?

" It was not the purpose of the Constitution to de- " prive the Legislature of any power, necessary to enable " them to make private legislation ample and abundant to " accomplish its legitimate purpose, but the object was to " prevent them from covertly embracing several distinct " and foreign subjects in one act. Should we sustain this " objection, we should tie up the hands of the Legislature, " so that it could not freely legislate on private subjects, " so as to accomplish the needful purposes for which such " legislation is properly designed. Indeed, we should " practically repeal essential portions of the charters of " probably a large majority of the private corporations of " the State, which have hitherto never been questioned. " We entertain no doubt of the constitutionality of the " enactment, and the judgment must beaffirmed." *O'Leary* v. *County of Cook*, 28 Ill. 538.

That the granting of municipal aid to railroad companies, by subscription or donation, is incident or germane to the chartering of such companies, is such a well recognized fact that it needs no argument.

The granting of aid to the Illinois Grand Trunk Railway was the sole object of this amendment of March 25, 1869.

That the provisions contained in it would have been properly incorporated into the original charter of the Illinois Grand Trunk Railway cannot be a subject of doubt; therefore the title to this amendment of March

25, 1869, was eminently proper and constitutional, because the subject matter of the amendment was germane to the object of the original charter, as enunciated by our State Supreme Court.

I will not review the authorities cited to sustain the views of counsel on this point. In my judgment, not one of them is pertinent to the question at issue—that is, the facts involved in the authorities referred to are not parallel with the facts in this case, and cannot be made to apply to this case.

Counsel has so far departed from the record as to say, in substance, that the General Assembly of the State of Illinois, at its session of 1869, passed a large number of bills relating to the incurring of debts by muncipalities in aid of railroads, and that such bills differed in their verbiage from the bill in question. This enables me to note the same fact, and to suggest to the court that the *titles* to such bills were uniformly like the one we are discussing.

These bills were not all drafted by one man, nor from a stereotyped form, and of course they differed in their verbiage; but inasmuch as their titles were revised by the same committee in the Legislature, these titles preserve a marked similarity.

The next point is, was the subscription of plaintiff in error to the stock of the railway properly made, and the bonds legally executed under the act?

There is no pretense, in this case, that the supervisor and town clerk *created the debt* which we are now seeking to collect, and the question of taxation does not enter into the discussion.

Article 9, section 5 of the Constitution of 1848, is referred to. That section relates exclusively to taxation, and has nothing to do with the power of plaintiff in error to issue the bonds. Section 2 of the act of March 25, 1869 (*Record, p. 16*), is in perfect harmony with the above section of the Constitution.

We have nothing to do with the question of taxation in this case. The questions before the court are: First—Was the act of March 25, 1869, legally and constitutionally passed? Second—Were the subscription and bonds properly voted for by the electors of plaintiff in error prior to any constitutional inhibition? and Third—Were the bonds and coupons legally executed, *i. e.*, by the proper officers of the town?

When the question of taxation shall arise, then it will appear that section 2 of the act in controversy leaves that subject precisely where section 5, article 9 of the Constitution of 1848, places it.

On page 10 of his argument counsel propounds the following conundrums, to wit:

"*First*—Did the Legislature authorize the supervisor "and clerk to make the subscription and issue the bonds?

"*Second*—Are the supervisor and clerk corporate "authorities within the meaning of article 9, section 5 of "the Constitution?"

In answer to the first query, I answer: if counsel means to ask if the Legislature sought to grant to the supervisor and clerk power *to create a debt*, I say NO. If, however, he wants to know whether the Legislature authorized the supervisor and clerk to execute the bonds and make the subscription *after the people of the town had created the debt by a popular vote on June 25, 1870*, as they were constitutionally empowered to do, I argue that they were.

The act expressly provides that the supervisor and town clerk shall make the subscription and issue the bonds in payment therefor, the electors—legal voters of the town—having authorized the same by a popular vote called for that special purpose.

At this point I desire to call the court's attention to the manner in which counsel quotes the act of March 25, 1869.

Mr. Story, in his argument, on page 31, quotes it thus: "If a majority of said votes shall be for subscription, "then the 'corporate authorities' and the supervisor and "town clerk shall cause said subscription to be made."

Mr. Goudy approaches nearer the text when he, on pages 10 and 11 of his argument, quotes it thus: "If a "majority of the voters shall be for subscription, then the "corporate authorities of said city, town or township AND "the supervisor and town clerk of said township so voting, "SHALL CAUSE said subscription to be made."

I take no exception to the stress placed upon the words "AND" and "SHALL CAUSE" in the latter quotation, but I do object to Mr. Goudy interfering with the punctuation. In the act as it is published in the private laws of 1869, vol. 3, p. 307, and in the record, at page 16, there appears after the word "township," and before the word "AND," emphasized by Mr. Goudy, a comma. This mark of punctuation is the most insignificant of the group, yet it performs a function in composition that must be preserved. This comma Mr. Goudy has omitted, —*no doubt by accident*—and at first blush the reader would suppose that the clause meant that the "corporate authorities," interpreted by counsel to mean the legal voters of the town, and the supervisor and town clerk should all join in the execution of the bonds and coupons and making the subscription.

The Legislature never contemplated this. The words of the act convey no such meaning, and the ingenuity of counsel is ineffectual to accomplish this purpose. This comma between "township" and the word "and", under the rules governing punctuation in composition, has the effect of exhausting the force or purpose of the words "corporate authorities," preceding, and which pertain to cities, towns, and townships not under township organization, and the words "and the supervisor and town clerk of said township so voting," stand as an independent subject to the verb "shall cause." Even if the com-

ma did not appear where it belongs, the courts would place it there, if thereby the intentions of the Legislature could be carried out and an intelligent construction given to the act.

" It is a rule of interpretation, that such construction " ought to be put upon a statute as may best answer the " intention which the makers had in view; and also, that a " statute ought to be so construed that, if it can be pre- " vented, no clause, sentence or word shall be superfluous, " void, or insignificant. "

Decker et al. v. *Hughes et al.* 68 Ill. 41.

This act has no meaning in so far as the execution of the bonds is concerned, if it does not specially provide that the supervisor and town clerk shall execute the bonds after the debt was created by the vote of the people.

The cases cited by counsel go, not to the mere manual labor of executing bonds, but to the creation of a debt, and there is no necessity of questioning the doctrine laid down in *Marshall* v. *Silliman*, 61 N. Y. 218, and *Elmwood* v. *Marcy*, 92 U. S. 289, and the other cases, because in this case the debt sued on was *created* by the people in their vote of July 25, 1870, under the law of March 25, 1869, and the supervisor and town clerk were constituted the agents of the town, *under the act*, to make the subscription and execute the bonds and coupons; and if the act had not so specified, even then, under the rulings of our Supreme Court in *Town of Windsor* v. *Hallett*, and *The Town of Douglas* v. *The Niantic Savings Bank*, cited on page 26 of our brief, the supervisor and town clerk would have been the proper " corporate authorities " to have executed the *evidences* of indebtedness after the debt had been *created* by the people.

Since preparing the brief in this case, advance sheets of the 97 Illinois Reports have come into my hands, containing the text of the case of *Town of Windsor* v. *Hallet*, also the case of *Town of Prairie et al.* v. *Lloyd et al.*,

from which I quote that part relating to the supervisor and town clerk being held by the Illinois Supreme Court as the proper "corporate authorities" to execute bonds and coupons, after they had been voted by the people.

In *Town of Prairie* v. *Lloyd*, 97 Ill. 197, the court says:

"It is further urged that the bonds were not executed "by the 'corporate authorities,' as required by the act "under which they were issued. While the expression, "corporate authorities, does not ordinarily in its applica- "tion to townships signify the supervisor and town clerk, "yet we have no doubt of its being used in that sense in "the act in question."

And in *Town of Windsor* v. *Hallett*, 97 Ill. 209, the following language is used:

"It is next insisted that the supervisor and town "clerk do not represent the corporate authority of the "township, and the act only confers the power on the "'proper corporate authority.' The expression is indefin- "ite when applied to an organized township. The town- "ship organization law has not in terms declared what "officers shall represent the corporate authority. In pri- "vate corporate bodies the president is the head of the "corporation, and represents its authority in the transac- "tion of its business with strangers to the organization. "So the supervisor for many purposes acts as the head or "representative of the corporation. The voters, perhaps, "are vested with larger powers than any of its officers, "and the same is true of the board of directors of a pri- "vate corporation, and yet its president is the head or "representative officer.

"When the charter was passed it was the duty of the "supervisor, when the corporation was sued, to attend to "its defense, and report to the next town meeting; when "the town meeting directs real estate to be conveyed, un- "less some other person is designated for the purpose, the "conveyance shall be signed by the supervisor in his offi-

" cial capacity, and attested by the town clerk. He is " also empowered, and it is made his duty, to prosecute " for penalties and forfeitures to the town. In suits against " the town process is required to be served on him. " Thus it is seen that he is made, in all of these, and it " may be other matters, the head or representative of the " town. And above all he is the representative of his " town in the county board, and entrusted with the inter- " ests of his town in that body. We may, therefore, con- " clude that he was the proper corporate authority to " issue the bonds, attested by the town clerk, as it was but " a ministerial act to evidence the indebtedness voted by " the electors.

" Again, in empowering townships to incur indebted- " ness, and issue evidence thereof, the General Assembly, " in all of the great number of acts passed for the pur- " pose, where the officers have been named to issue the " bonds, have designated the supervisor and town clerk, " it is believed, in every instance. From this action of " the General Assembly we are warranted in the conclu- " sion that they regarded these officers as the proper cor- " porate authority to perform the act. This is almost as " satisfactory as had they been specifically declared to be " the 'proper corporate authority.' We must, therefore, " hold that these bonds were issued by the proper officers.

" This question, as now presented, has never been be- " fore us for determination. And what has been said as " to village authorities has no controlling application in " this case. Nor does the fact that it has been held that " they are not the authorities the constitution has desig- " nated to incur the town indebtedness militate against the " position here maintained. There is a broad difference " between the creation of a debt and merely executing " evidence of the debt. Whilst the voters of a town can " alone create the debt, and are for that purpose the town " authorities, the supervisor and town clerk may be the " authorities who may issue the bonds, and such we think

" is the fact. In one or two cases it has been held that " they are not the authorities that the Generul Assembly " may authorize to incur a debt, but we have not held, nor " did we intend to hold, they were not the authorities to " issue town bonds.

" In those cases it was said that persons not elected " or appointed by the voters of the corporation were not " corporate authorities within the provisions of the con- " stitution. These officers were elected by the people, " and are corporate authorities."

The second question propounded by counsel, to wit, " Are the supervisor and clerk corporate authorities within the meaning of article 9, section 5 of the Constitution?" has no signification here, because that section relates to taxation alone, and not to the creation of a debt and the execution of the evidences thereof, under competent legislative authority and a vote of the people. We must not be diverted from the meritorious questions involved in this case, and I respectfully ask that the court scrutinize this act of March 25, 1869, for itself, in connection with all the authorities alluded to by both parties hereto, for only in this way can an intelligent solution be reached, keeping in mind also the recitals contained on the face of the instruments sued on, which are binding upon the town.

It is true that the creation of a debt by a town carries with it, eventually, the levying and collection of taxes to pay that debt; and the voting to subscribe for stock by plaintiff in error, and to issue bonds in payment therefor, carried with it the necessary implication to levy and collect taxes to pay the bonds and coupons as they might mature; *but* this is all brought about by the vote of the people, the electors and tax-payers, and is in no sense the act of the supervisor and town clerk in executing the bonds and coupons and subscribing for the stock, which is simply carrying out the will of the people as expressed in their vote.

In *Town of Prairie et al.* v. *Lloyd et al.*, 97 Ill. 195 and 196, the court says: "In like manner it is claimed "that if it is desired to make donation in bonds, the ap- "plication must require an election called to determine "both the question of donating the bonds and also of "levying a tax to pay them, otherwise the call of the elec- "tion will be unwarranted, and the election itself, and all "proceedings under it, void.

* * * * * *

"The act clearly empowered the township to make "the donation of the bonds upon 'a vote authorizing it,' "and inasmuch as the same power which authorized the "issuing and donation of these bonds also imposed the "obligation of paying them, and this could only be done "by the exercise of the taxing power, we are of opinion "it is but just and reasonable to hold that the people of "the township, by voting the donation of the bonds, im- "pliedly voted for the levy of the requisite tax to pay "them, whenever it should be required for that purpose, "and this was all the act required."

So in the case at bar, it was the vote of June 25, 1870, and not the act of the supervisor and clerk in exe cuting the bonds and coupons, that created this debt which is now sought to be collected; and by the same vote the town took upon itself the duty of levying and collecting taxes to pay the debt as it matured.

On page 15 of his argument counsel says: "*The act "of March 25, 1869, did not authorize an election to be "held at which only legal voters could vote*," and proceeds to play upon the word "inhabitants," as used in the act, and to argue that the Legislature did not mean, by using that word, that the electors or legal voters in the township only should participate in the election and in creating the debt.

I quote from his argument, at page 15:

"The call being made, as required by the act of "March 25, 1869, and the township act, and the polls

" being opened, *who, by the act of March 25, 1869, could* " *vote? The inhabitants, or legal voters?* If only *legal* " *voters*, then there was a failure by the Legislature to " provide for a mode of submitting the proposition to the " *inhabitants*, whose consent was a condition precedent. " If the *inhabitants* were to vote at this election, then the " Legislature failed to provide for the expression of the " will of the *legal voters*, who constituted the *corporate* " *authorities* mentioned in the Constitution, on the ques- " tion of subscription."

Under the wholesome rule of interpretation laid down by our Supreme Court in *Decker* v. *Hughes*, *supra*, which is a principle as ancient as the law itself, this act of March 25, 1869, must be construed so as to make sense, and not nonsense; especially when large property interests are involved, as in this case.

The words used in the act are: " The proposition " for said subscription having been first submitted to the " inhabitants of such city, town or township, and approved " by them."

It is a familiar maxim that the greater includes the less. The inhabitants of a locality are all the living human beings residing within the limits of such locality, including men, women and children, citizens and aliens.

The electors or voters of the same locality are limited to those only who have the legal qualifications to participate in the elective franchises and to vote upon all questions of public interest.

Reverting again to the Constitution of 1848, article 6, section 1, we find that the legal voters in Illinois, or the electors, as they are sometimes called, were limited to white male citizens above the age of twenty-one years, having resided in the State one year, providing they were otherwise qualified to vote by reason of their nativity or naturalization; therefore, of necessity, the voters or electors constitute a less number than the inhabitants; and, by operation of law, the legal voters or electors of plaintiff

in error could alone vote at the election contemplated in the act. But wherein can there be any inconsistency in the act providing for the proposition being submitted to the inhabitants, and the question to be voted upon by the electors or legal voters? From this record, including the special finding of the court, the provisions of this statute were literally fulfilled, the proposition being first submitted to the inhabitants, which was notice to the legal voters or electors, and by a unanimous vote of such electors or voters, who were the only persons under the law who could vote, the proposition to subscribe for $30,000 of stock and issue bonds to the same amount was carried July 25, 1870.

If notice was given, or the proposition submitted to the inhabitants of plaintiff in error under this act of March 25, 1869, then that notice was given, and the proposition submitted, to the legal voters or electors of the town. If the electors or legal voters of the town voted July 25, 1870, upon the proposition thus submitted, under the notice as given, then the condition precedent to creating this indebtedness was complete, and no exegesis, or play upon the words "inhabitants," "electors" and "legal voters," can change the fact.

The argument made is, "that the act providing for "the proposition being submitted to the inhabitants, the "vote upon the same should have been cast by the inhabi-"tants, that is to say, men, women and children."

Had this most unreasonable construction been carried into effect, this suit would never have been instituted, for the reason that the bonds would have been void. Had the women and children voted at this election, it would have been illegal, and the defense to this suit complete.

Counsel cite in this connection: *Barnes* v. *Town of Lacon*, 84 Ill. 463; *Town of East Oakland* v. *Skinner*, 94 U. S. 258, and *Allen* v. *City of Louisiana*, U. S. S. C. Oct. T., 1880.

Without discussing the principles involved in *Barnes* v. *Town of Lacon*, I will only refer to the same as not applying to the question at issue; and further, that this court, in *Town of Roberts* v. *Bolles*, 101 U. S. 119, which was a suit brought upon the same series of bonds as those sued on in *Barnes* v. *Lacon*, differs with the Illinois court on all the principles involved therein.

In the *East Oakland* case the sole question was whether a supervisor could bind his town, a municipal corporation, he acting as the agent of such town under a provision in a charter of the Paris and Decatur Railroad Company, which provided in one of its sections, that "*the agent of any corporate body*" might subscribe, etc., and this court, correctly following the rulings of the Illinois court on the same question, decided that the charter only extended to private and not municipal corporations, and that the bonds were void.

In the *City of Louisiana* case, the question arose as to whether that city could hold an election and vote an indebtedness, without first having legislative authority therefor; and incidental thereto, the distinction, under the Constitution of Missouri, between voters and tax-payers is discussed. Nothing contained in this case, however, can have any effect to invalidate the bonds and coupons sued on in the case at bar, because the facts applicable to each are totally different; but I have cited a large number of cases in my brief, decided by this court, wherein bonds issued under circumstances similar to those sued on herein, and containing similar recitals, were held valid in the hands of innocent purchasers for value, and the same ruling should be followed in this case.

In closing this branch of the case, it may not be improper to suggest that legislative bills are not infrequently prepared by persons not skilled in that character of work, and a loose language is sometimes employed; but if courts should adopt the rule of construction insisted

upon by counsel in this case, what act would withstand the judicial scalpel? Or when would there be a limitation to violation of vested rights?

I have but one more word in reply to this argument. Mr. Goudy has followed his associate in trying to bring this case within the section of the Constitution of 1870, relating to municipal subscriptions to railroads in Illinois, and he refers to the communication on page 20 of the record, dated August 3, 1870, and signed by three individuals, followed by the word "Directors," which counsel claims was a rejection of the vote of July 25, 1870, and argues that the $40,000 bonds were issued in pursuance of the vote of August 6, 1870. The record does not agree with counsel's statement of the facts.

What force or effect could possibly be given to this communication? It was not even proven to be genuine. Conceding that it is genuine, wherein does the record show that these men were in fact directors? If it is genuine, and the signers were in fact directors, wherein does the record show that they constituted any material part of the board, or had any power to act? Conceding that it is genuine, that the signers were in fact directors, that they constituted a majority of the board of directors, and had plenary power to write this communication, what possible effect could it have had to invalidate the election of July 25, 1870, and the $30,000 bonds issued thereunder?

The letter was dated August 3, 1870, and all it purports to do is to indicate to the town that the Ill. G. T. R. Co. would graciously accept $40,000 in bonds from the plaintiff in error, to wit: $30,000 which were voted July 25, 1870, and $10,000 to be voted three days later, to wit: on August 6, 1870, when the town held a special election which had been called seven days before this letter was written, and at which it voted $10,000 *in addition* to the vote of $30,000 in the July previous.

Besides, as I have already argued in my brief and argument heretofore filed, the Constitution of 1870 says

nothing about "*acceptance*," neither does this court, nor the Supreme Court of Illinois, in construing that article of the constitution.

The only conditions precedent to the valid execution and issue of bonds under that article were: *first*, competent legislative authority; and *second*, a vote by the people before the going into effect of that constitution. These are contained in the recitals in the bonds, and defendant in error is not bound to look further.

The communication referred to, and the election of August 6, 1870, under which $10,000 additional bonds—not now in question—were issued, does not invalidate the instruments sued on in this case. There is no law in Illinois making such facts public notice to persons purchasing municipal bonds, and even if there was, it is difficult to conceive how this second election of August 6, and this acceptance by the persons who sign this communication, could affect the bonds in question. The extent of this letter was the offer to accept $40,000 in bonds. If a portion of those $40,000 bonds, that is, the $10,000 voted in August, were issued without warrant of law, which I deny, and that question will be tried in another case now pending in this court, then the owner of those bonds must suffer to that extent. The issue under each vote must stand on its own merits. We are now dealing with the issue of $30,000 under the vote of July 25, 1870, and I respectfully submit that this issue is valid.

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